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TRANSCRIPT OF RECORD

UNITED STATES OF AMERICA

CRIMINAL DIVISION

NO. 5000

194

CHARLES E. WATKINS

SAVING CITY TRUST & SAVINGS COMPANY, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No.

CHARLES E. SMITH, Appellant,

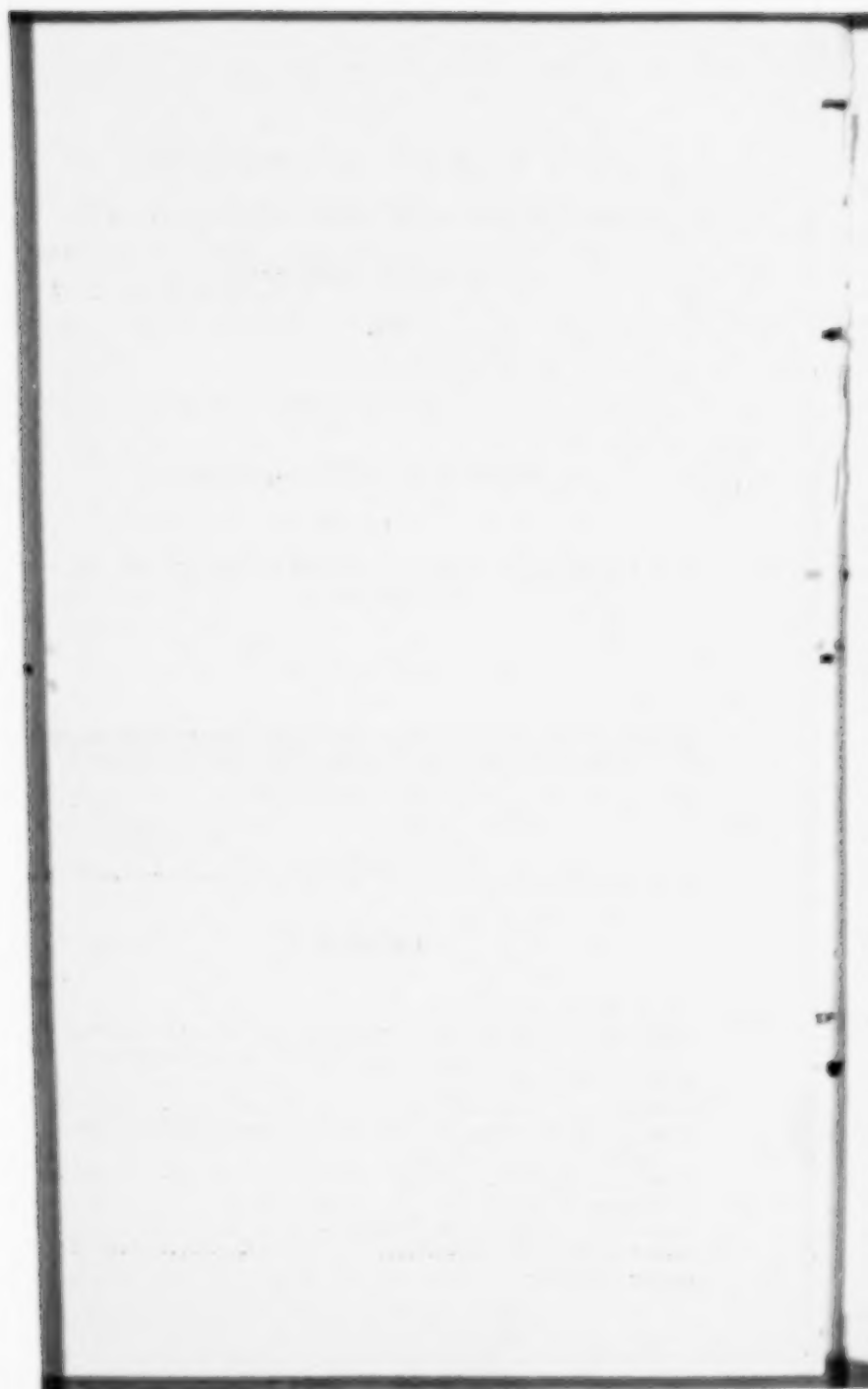
DEFENDS

KANSAS CITY TITLE & TRUST COMPANY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.

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TRANSCRIPT OF RECORD

PLEAS held in the Western Division of the Western District of Missouri, at a regular term of said Court begun and held on the 30th day of October, 1919, at Kansas City, Mo.

Present; Hon. ARBA S. VANVALKENBURGH, District Judge.

BE IT REMEMBERED, That heretofore, to-wit, on July 21, 1919, came the plaintiff, by Frank Hagerman, Esq., and William Marshall Bullitt, Esq., and filed in our Clerk's office of the said court his bill in equity, which reads and is as follows, to-wit:

IN THE

District Court of the United States

FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI,
AT KANSAS CITY.

CHARLES E. SMITH, - - - - - Plaintiff,

vs. No. Bill in Equity (as amended).

KANSAS CITY TITLE & TRUST COMPANY, - Defendant,

*To the Honorable, the Judges of the District Court of
the United States for the Western Division of
the Western District of Missouri, at Kansas
City:*

The plaintiff, CHARLES E. SMITH, states as follows, to-wit:

(1) CHARLES E. SMITH (hereinafter called SMITH) is a citizen of the State of Missouri and a resident of Kansas City in that state.

THE KANSAS CITY TITLE & TRUST COMPANY (hereinafter called the TRUST COMPANY) is a corporation, created, organized and existing under the laws of the State of Missouri (excerpted in the margin*) and it is a citizen of that state with its residence, *i. e.*, its principal place of business, at Kansas City, Missouri, whereof it is an inhabitant; it has \$750,000 paid up capital stock consisting of 7,500 shares of the par value of \$100; and it is engaged in the business of acting, *inter alia*, as agent, executor, administrator, guardian, curator, trustee and generally in fiduciary capacities.

This is a suit of a civil nature, in equity, and it arises under the Constitution and laws of the United States; and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.

*An Act of the Legislature of Missouri, approved March 25, 1915, entitled:

"An Act to repeal articles I, II and III of chapter 12 of the Revised Statutes of 1909 relating respectively to 'state banking department,' 'banks of deposit and discount,' and 'trust companies,' and to repeal also the following three acts relating to the same subjects, and being all the amendments made to said articles since 1909, to-wit:

1. Section 1090, page 91, of the session acts of 1911;
2. Section 1090, page 104, of the session acts of 1911;
3. Section 1074, page 111, of the session acts of 1913, and to enact in lieu of all thereof new articles entitled respectively, 'state banking department,' 'banks' and 'trust companies,' to be designated respectively as articles I, II and III of said chapter 12, with an emergency clause." (Laws of Mo. 1915, pp. 162-195.)

(2) Congress has passed two Farm Loan Acts, to-wit:

First, an Act approved July 17, 1916 (39 Stat. L. 360) entitled:

"AN ACT to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes."

Second, an Act approved January 18, 1918, entitled:

"AN ACT amending section 32 Federal Farm Loan Act approved July 17, 1916."

Under the provisions of these acts, there have been organized in the United States two different kinds of Federal corporations, to-wit:

12 Federal Land Banks.

21 Joint Stock Land Banks.

The United States has been divided, under said acts, into 12 Federal Land Bank districts, in each of which one Federal Land Bank has been organized; and in eight of the districts 21 Joint Stock Land Banks have been organized.

Federal Land Banks. Each Federal Land Bank has taken from the owners of farm lands situated in its district a large amount of mortgage notes secured by mortgages on such lands; has loaned the amount thereof to the respective borrowers payable

in installments extending over 36 years; and after depositing such mortgages and notes with the Farm Land Registrar of the district, it has executed and issued an equivalent amount of its own "collateral trust" obligations, called Farm Loan Bonds (which are secured by the said deposit of an equivalent amount of such farm mortgages and notes as collateral) in denominations of \$25, \$50, \$100, \$500, and \$1,000, and due and payable by the Federal Land Bank to bearer in 20 years from the date thereof; and each of said Federal Land Banks has sold, and is continuing to offer for sale, large amounts of said Farm Loan Bonds to investors and on the bond markets of this country.

Section 26 of said Act of Congress, approved July 17, 1916, provides:

"First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks, and Farm Loan Bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they, and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation."

Section 21 provides:

"Every farm loan bond issued * * * shall contain in the face thereof a certificate * * * that it is not taxable by National, State, municipal or local authority."

The said Farm Loan Bonds are being widely advertised by the Federal Land Banks, by the Farm

Loan Board and by the purchasers thereof as completely exempt from all Federal, State, Municipal and Local taxation, which includes *inter alia*, the Federal income excess profits and inheritance taxes, the State inheritance and *ad valorem* taxes and all City, County, and local *ad valorem* taxes; and the owners of such Farm Loan Bonds do not report them, or the income therefrom, for assessment for taxation of any kind by the Federal, State, municipal or local governments.

Joint Stock Land Banks. Under the provisions of the said Acts, numerous private persons have organized, in various parts of the United States, twenty-one Joint Stock Land Banks, the entire capital stock of which was subscribed for, and is, and always has been, wholly owned by such private persons, who are operating and will operate such Joint Stock Land Banks purely and exclusively for their own individual and private profit as in the case of any other purely private corporation.

The names, locations and amounts of capital stock of such Joint Stock Land Banks, as of June 30, 1919, are as follows, to-wit:

NAMES.	Chartered.	Operates In	Paid in Capital
1. Iowa, Sioux City, Iowa.....	Apr. 27, 1917	Iowa & S. D.	\$250,000
2. Virginia, Charleston, W. Va.....	May 7, 1917	Ohio & W. Va	250,000
3. Fletcher, Indianapolis, Ind.....	June 28, 1917	Ind. & Ill.	250,000
4. First, Chicago, Ill.....	July 25, 1917	Iowa & Ill.	800,000
5. Liberty, Salina, Kansas.....	Jan. 9, 1918	Mo. & Kansas	425,000
6. Mississippi, Memphis, Tenn.....	June 22, 1918	Miss. & Tenn.	250,000
7. Arkansas, Memphis, Tenn.....	June 22, 1918	Ark. & Tenn.	250,000
8. Lincoln, Lincoln, Neb.....	July 12, 1918	Iowa & Neb.	430,000
9. Bankers', Milwaukee, Wis.....	Sept. 6, 1918	Minn. & Wis.	250,000
10. First, Fort Wayne, Ind.....	Dec. 20, 1918	Ind. & Ohio	250,000
11. First, Minneapolis, Minn.....	Jan. 14, 1919	Minn. & Iowa	250,000
12. Illinois, Monticello, Ill.....	Jan. 24, 1919	Iowa & Ill.	250,000
13. Montana, Helena, Montana.....	Apr. 15, 1919	Montana & Idaho	250,000
14. Fremont, Fremont, Nebr.....	Apr. 17, 1919	Iowa & Nebr.	125,000
15. Des Moines, Des Moines, Iowa.....	Apr. 22, 1917	Iowa & Minn.	125,000
16. First Texas, Houston, Texas.....	Apr. 23, 1919	Texas & Okla.	125,000
17. First, Omaha, Nebr.....	May 8, 1919	Iowa & Nebr.	153,000
18. Colonial, Norfolk, Va.....	May 12, 1919	Va. & N. C.	125,000
19. Central Iowa, Des Moines, Ia.....	May 15, 1919	Iowa & Minn.	125,000
20. Virginia-Carolina, Norfolk, Va.....	June 11, 1919	N. C. & Va.	125,000
21. Southern Minnesota, Redwood Falls, Minn.....	June 25, 1919	Minn. & S. D.	250,000

A large number of persons desiring to borrow money from such Joint Stock Land Banks upon the security of farm lands in their respective territories, have executed, and are about to execute, their mortgage notes and mortgages to secure the same, on farm lands to each of such Joint Stock Land Banks; and each of such Joint Stock Land Banks that has actually begun to operate, has deposited the notes and mortgages with the Farm Loan Registrar of its respective district, and has thereupon executed and issued an equivalent amount of its own collateral trust obligations, which are also called Farm Loan Bonds, and which are secured by the said de-

posit of such equivalent amount of said notes and mortgages as collateral.

Each of the said Joint Stock Land Banks so operating, has sold, and is continuing to offer for sale, large amounts of the said Farm Loan Bonds so issued by it to investors and on the bond markets of this country.

Section 26 of the said Act of Congress, approved July 17, 1916, provides:

"First mortgages executed to Federal Land Banks, or to Joint Stock Land Banks, and Farm Loan Bonds issued under the provision of this act, shall be deemed and held to be instrumentalities of the Government of the United States and as such they, and the income derived therefrom, shall be exempt from Federal, State, Municipal and local taxation."

Section 21 provides:

"Every farm loan bond issued . . . shall contain in the face thereof a certificate . . . that it is not taxable by National, State municipal or local authority."

The said Farm Loan Bonds so issued by the Joint Stock Land Banks, are being widely advertised by the said Banks and by the purchasers thereof as completely exempt from all Federal, State, Municipal and local taxation, which includes *inter alia* Federal income, excess profits and inheritance taxes, the State income, inheritance and *ad valorem* taxes and City and County and local *ad valorem* taxes; and the owners thereof do not report them for assessment for

taxation of any kind by the Federal, State or municipal governments.

Pursuant to the provisions of Section 32 as amended by the Act of January 18, 1918, of the Federal Farm Loan Act, the Secretary of the Treasury has made certain deposits for the temporary use of Federal Land Banks out of moneys in the Treasury not otherwise appropriated, a statement whereof is as follows, viz.:

Federal Land Bank of	DEPOSITS		REPAYMENTS.	
	Date	Amount.	Date.	Amount.
Springfield, Mass. . .	Nov. 16, 1918	\$500,000	Aug. 27, 1919	\$ 500,000
Louisville, Ky.	" 2, 1917	250,000		
	" 16, 1917	250,000	Nov. 31, 1917	500,000
	Jan. 8, 1918	250,000	May 1, 1918	250,000
New Orleans, La. . .	Jan. 19, 1918	250,000	May 1, 1918	250,000
St. Paul, Minn. . . .	Nov. 22, 1917	430,000		
	Jan. 8, 1918	250,000	Dec. 22, 1917	430,000
	Jan. 16, 1918	250,000		
	" 18, 1918	160,000	May 1, 1918	660,000
Wichita, Kansas. . .	July 3, 1917	250,000		
	" 24, 1917	250,000	July 26, 1917	500,000
	Dec. 8, 1917	250,000		
	" 11, 1917	250,000		
	" 19, 1917	250,000		
	" 24, 1917	500,000		
	Jan. 9, 1918	210,000		
	" 12, 1918	250,000		
	" 16, 1918	250,000	May 1, 1918	1,960,000
Houston, Texas. . .	Jan. 5, 1918	500,000		
	" 17, 1918	200,000	May 1, 1918	700,000
	July 2, 1918	400,000	Nov. 26, 1918	70,000
			May 8, 1919	330,000
Berkeley, Calif. . .	Jan. 16, 1918	250,000	May 1, 1918	250,000
Spokane, Wash. . .	July 24, 1917	250,000		
	Dec. 24, 1917	500,000	July 27, 1917	250,000
	Jan. 11, 1918	250,000		
	Jan. 16, 1918	250,000	May 1, 1918	1,500,000

For which the respective Banks issued their respective certificates of indebtedness at 2% interest per annum.

The Federal Land Banks were the owners on September 30, 1919, of United States Bonds of a par amount of \$4,230,805, and the Joint Stock Land Banks were the owners on August 31, 1919, of United States Bonds of a par amount of \$3,287,503.

Pursuant to the provisions of Section 5 of said Act, the Secretary of the Treasury has invested in the capital stock of said Federal Land Banks, public funds amounting to \$8,892,130 and on July 1, 1919, said Secretary was the holder on behalf of the United States of \$8,265,809, par amount of said capital stock.

Pursuant to the provisions of Section 32 of said Act as amended, the Secretary of the Treasury has purchased Farm Loan Bonds issued by said Federal Land Banks of a par amount of \$149,775,000, of which a par amount of \$136,885,000, was still held in the Treasury of the United States on July 1, 1919.

Up to September 30, 1919, bonds have been issued under the Act by the Federal Land Banks to the amount of \$285,600,000, of which about \$135,000,000 are held in the Treasury of the United States, under the Amendment of January 18, 1918.

Up to September 30, 1919, 27 Joint Stock Land Banks have been incorporated under the Act, having an aggregate capital of \$8,000,000, all of which has been subscribed and \$7,450,000 paid in; which banks have issued under the provisions of the Act and sold

and there are now outstanding in the hands of the public, bonds to the amount of \$41,000,000.

The Secretary of the Treasury, up to the present time, has not designated any of the Federal Land Banks nor the Joint Stock Land Banks as depositaries of public money, nor except as hereinafter stated, employed them or any of them as financial agents of the Government nor have they or any of them performed any duties as depositaries of public money or as financial agents of the Government, nor have they or any of them accepted any deposits or engaged in any banking business.

During the summer of 1918, the Federal Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having at the request of the Secretary of Agriculture set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three banks mentioned have made upwards of 15,000 loans of said character aggregating in all the sum of upwards of \$4,500,000, and are now engaged in collecting said loans, all of which were secured by crop liens. The said banks acted in said matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks, but no compensation.

(3) Section 27 of the said Act of Congress, approved July 17, 1916, provides:

"That farm loan bonds issued under the provisions of this Act by Federal land banks or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

Under the laws of Missouri governing its incorporation, the defendant TRUST COMPANY can with corporate, fiduciary and trust funds, large amounts of which it has on hand, buy, invest in and sell all kinds of Government, State, Municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks and other investment securities, but it can not buy, invest in or sell any such bonds, papers, stocks or securities which are not authorized to be issued by a valid law or which are not investment securities.

The TRUST COMPANY, against the will and consent of the plaintiff, intends, threatens and proposes to, and will, if not restrained herein, take from its said corporate and fiduciary funds, in which its stockholders and *cestuis que trust* are directly interested, large sums of money, and invest the same at par and accrued interest in

(a) \$10,000 par value of Farm Loan Bonds, issued by Federal Land Banks; and

(b) \$10,000 par value of Farm Loan Bonds issued by Joint Stock Land Banks.

The TRUST COMPANY has been induced to direct its officers to make the said investment by reason of its reliance upon the provisions of the said Farm Loan Acts, and especially sections 21, 26 and 27 thereof above quoted, by which the said Farm Loan Bonds, whether issued by the Federal Land Banks or by the Joint Stock Land Banks, are declared to be instrumentalities of the Government of the United States, and as such, they and the income derived therefrom, are declared to be exempt from Federal, State, Municipal and local taxation, and are further declared to be lawful investments for all fiduciary and trust funds.

The Farm Loan Bonds above described, in which the TRUST COMPANY proposes to invest its corporate and fiduciary funds, have no legal existence and no right to be issued except by and under the Acts of Congress approved July 17, 1916, and January 18, 1917, respectively.

Neither such bonds issued by the Federal Land Banks nor those issued by the Joint Stock Land Banks are of any validity, because no valid law authorizes their issue and they are not, because invalid and without authority for their issue, proper securities for the investment of corporate or trust funds; and therefore, the TRUST COMPANY is not entitled to invest its funds therein.

Each section of each of said Acts of Congress, and particularly each of Sections 21, 26 and 27 of the Act approved July 17, 1916, is illegal, void and un-

constitutional, because not authorized by the Constitution of the United States nor by any of the Amendments thereto, and because contrary to and in violation of Article X of the Amendments to the Constitution of the United States, which provides that

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.”

No power to provide for

(a) The organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations and/or the exemption of the obligations of such private corporations, and the income derivable therefrom, from the taxing power of the Federal Government or of the States or the municipal subdivisions thereof;

(b) The organization of corporations to provide capital for agricultural development, and/or to loan money to farmers or prospective farmers, at lower rates of interest than the market rate and/or the exemption of the obligations of such corporations, or the income derivable therefrom, from the taxing power of the Federal or State Governments or the municipal subdivisions thereof; and/or

(c) The organization of such corporations as the Federal Land Banks or the Joint Stock Land Banks, or the issuance of the obligations thereof, or the exemption therefrom from taxation,

has ever been delegated to the United States by the Constitution nor prohibited by it to the States, but all

such powers have been reserved to the States, respectively, or to the people.

The TRUST COMPANY claims that all of the provisions of the said two Acts of Congress, approved, respectively, July 17, 1916, and January 18, 1918, are valid and enforceable; that the provision therein providing for the exemption of all bonds, and the income derivable therefrom, issued by the Federal Land Banks and/or by the Joint Stock Land Banks, from all forms of taxation, is constitutional; and that the said bonds, and the income therefrom, are exempt from all forms of Federal, State or Municipal taxation; and the TRUST COMPANY proposes and intends to purchase said bonds solely because of its belief (a) in the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation; and it would not buy the bonds except for the tax exemption feature.

If the said exemption from taxation in Section 26 and/or if the provision of Section 27 authorizing the investment of fiduciary or trust funds in such bonds is not valid, then the Farm Loan Bonds issued by the Federal Land Banks and/or the Joint Stock Land Banks are not investment securities, are of doubtful value, and the bonds and the income therefrom are subject to taxation by the United States, the States and the local subdivisions thereof.

(4) The plaintiff, SMITH, is, and was at all the times herein mentioned and for a long time theretofore, the owner of 618 shares of the capital stock of

the defendant TRUST COMPANY of the par value of \$61,800., having a market value of that amount.

This suit is not founded on rights which may properly be asserted by the defendant TRUST COMPANY and is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

When the Board of Directors of the TRUST COMPANY indicated an intention to make an investment in said Farm Loan Bonds, the plaintiff SMITH objected to such investment and gave as his reason his belief that the Acts of Congress, under which said bonds were issued, were unconstitutional; that the exemption therein given of the said bonds from taxation was invalid; and that when purchased, said bonds and the income therefrom would be held to be subject to taxation by the Federal, State and Municipal Governments or some or all of them. But the Board of Directors disregarded the plaintiff's objections and decided to make the investment at one of its regular meetings, and on May 13, 1919, adopted the following resolution, against which the plaintiff, as one of the members of the Board of Directors, cast his vote, to-wit:

"WHEREAS, there is a difference of opinion among the stockholders as to whether this Company should or can take over or invest in Federal Land Bank Bonds and Joint Stock Land Bonds issued under the Federal Farm Loan Acts of July 17, 1916, and January, 1918; and

WHEREAS, this Company believes the securities to be valid and the provisions of said laws to be constitutional and valid;

BE IT RESOLVED:

1. The officers of this Company are hereby authorized and directed to invest in and purchase Federal Land Bank Bonds in an amount not to exceed Ten Thousand (\$10,000.00) Dollars, and Joint Stock Land Bank Bonds in an amount not to exceed Ten Thousand (\$10,000.00) Dollars.

2. In case of any investment hereunder and a contest of the right so to make it, this Company shall defend such suit, and may permit the officers of the Government to take charge of the defense or request it to appear *amicus curiae*, to the end that the validity of the bonds may be fully sustained."

As the Board of Directors of the TRUST COMPANY is the managing body, having authority by law to invest its corporate and fiduciary funds, there was no other effort which the plaintiff could make to prevent such investment, and the reason that he failed to prevent the determination to make the investment was that a majority of the Board of Directors believed that the bonds were valid and that the tax exemption feature thereof was lawful.

(5) The TRUST COMPANY has recently been negotiating for the purchase of such Farm Loan Bonds, \$10,000 par value issued by Federal Land Banks, and \$10,000 par value issued by Joint Stock Land Banks, and is just about to consummate the purchase thereof and to pay the purchase price therefor in excess of par, and will do so unless restrained by an injunction.

The plaintiff has no adequate remedy at law, and both he and the TRUST COMPANY will be damaged in a large sum if the unlawful investments aforesaid are permitted to be made.

WHEREFORE, the plaintiff, CHARLES E. SMITH prays

1. That the defendant KANSAS CITY TITLE & TRUST COMPANY, its officers, agents and employees be perpetually restrained and enjoined from investing any of its funds, corporate or fiduciary, in any of the Farm Loan Bonds issued by any of the Federal Land Banks or by any of the Joint Stock Land Banks;
2. That the Act of Congress approved July 17, 1916, and especially Sections 26 and 27 thereof, be adjudged and decreed to be unconstitutional, void and of no effect; and that the issuance of Farm Loan Bonds by the Federal Land Banks thereunder be adjudged and decreed to be illegal and unauthorized and that the tax exemption feature thereof be adjudged and decreed to be invalid;
3. That the Act of Congress approved July 17, 1916, and especially Section 16 thereof, authorizing the organization of Joint Stock Land Banks, and Section 26 thereof exempting from Federal, State, Municipal and local taxation the bonds issued by said Joint Stock Land Banks be adjudged and decreed to be unconstitutional, void, and of no effect; and that the issuance of Farm Loan Bonds by such Joint

Stock Land Banks thereunder be adjudged and decreed to be illegal and unauthorized.

4. For his costs herein expended and all legal, equitable and proper relief, as to justice and equity may seem proper.

MAY IT PLEASE YOUR HONORS to grant unto the plaintiff a writ of subpoena, to be directed to the said KANSAS CITY TITLE & TRUST Co., the defendant hereinbefore named, commanding and requiring it to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, the several allegations in this petition contained.

WM. MARSHALL BULLITT,

FRANK HAGERMAN,

Counsel for Plaintiff.

State of Missouri, }
County of Jackson, } ss.:

The plaintiff, CHARLES E. SMITH, being first duly sworn, deposes and says that he is the plaintiff herein, that he has read the foregoing petition in equity, and that the statements therein contained are true.

CHARLES E. SMITH.

Subscribed and sworn to before me by Charles E. Smith, this 19 day of July, 1919.

MAY LEE,

Notary Public in and for the County of
Jackson, State of Missouri.

My commission expires January 10, 1921.

At a Court held October 16, 1919:

This cause coming on to be heard on the petition of First Joint Stock Land Bank, of Chicago, Illinois, intervenor in this suit, to be made a party defendant herein, in behalf of itself and of the Joint Stock Land Banks enumerated in paragraph (2) of the bill of complaint herein, and on the annexed consent of the original parties to said suit, and it appearing to the Court that said First Joint Stock Land Bank of Chicago, Illinois, has an interest in said suit with respect to which it is entitled to be heard before this Court,

It is therefore ordered, adjudged and decreed that the First Joint Stock Land Bank, of Chicago, Illinois, has leave to intervene in said suit in behalf of itself and of the Joint Stock Land Banks enumerated in paragraph (2) of the bill of complaint herein, and to that end may appear in said suit within ten days from the date of this order in the same manner and with like effect as if named in the original bill as a party defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

Dated October 16, 1919.

ARRA S. VAN VALKENBURGH,
United States District Judge.

At a Court held October 24, 1919:

This cause coming on to be heard on the petition of Federal Land Bank of Wichita, Kansas, intervenor, in this suit, to be made a party defendant herein, on behalf of itself and of the other Federal Land Banks mentioned in the paragraph numbered (2) of the bill of complaint herein and enumerated in the said petition of said Federal Land Bank of Wichita, Kansas, and on the annexed consent of the original parties to said suit, and it appearing to the court that said Federal Land Bank of Wichita, Kansas, has an interest in said suit with respect to which it is entitled to be heard before this court,

It is therefore ordered, adjudged and decreed, That Federal Land Bank of Wichita, Kansas, has leave to intervene in this suit on behalf of itself and of the Federal Land Banks mentioned in said paragraph numbered (2) of the bill of complaint herein and enumerated in said petition, and to that end may appear in said suit within ten (10) days from the date of this order in the same manner and with like effect as if named in the original bill as a party defendant.

This order to be without prejudice to any proceedings heretofore had in this cause.

Dated Kansas City, Mo., October 24th, 1919.

ARBA S. VAN VALKENBURGH,
United States District Judge.

On October 22, 1919, the defendant filed the following motion to dismiss:

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION
OF THE WESTERN DISTRICT OF
MISSOURI.

Charles E. Smith, - - -	Plaintiff,	} No. 212
vs.		
Kansas City Title and Trust Company, - - -	Defendant,	
and First Joint Stock Land Bank of Chicago, Illinois, - -	Intervenor	

MOTION TO DISMISS.

Comes now the Kansas City Title and Trust Company, defendant above named, and respectfully moves the Court to dismiss this action at plaintiff's cost, for the reason that the bill of complaint as amended does not state facts sufficient to constitute a cause of action in equity.

JUSTIN D. BOWERSOCK,
*Solicitor for Kansas City Title and
Trust Company.*

At the conclusion of the oral arguments on the motion to dismiss the Bill in Equity, the Court delivered the following oral opinion.

The Court:

Well, gentlemen, it may, or may not, be known to you, this Court, beginning with next Monday, enters upon one of the most substantial terms of the district, a jury docket extending for weeks, during which time the Court would not be at liberty to consider, nor, in any event, to prepare any written opinion expressive of its views upon, this subject.

It has been made fairly apparent to the Court that it is the desire of counsel that an early decision in this case should be arrived at, to the end, that, as soon as possible, the Supreme Court of the United States may pass upon the ultimate fact, and the Court has been duly advised that, however, this decision may go, that will be the next step, and the final step, in this proceeding.

Of course, a *nisi prius* court, in a case involving great constitutional questions, occupies about the position—a position at least analagous to the platform of a railway coach: Its decision is not for the purpose of standing upon, but for the purpose of getting into the Supreme Court, and, very naturally, that is the ultimate desideratum. We stand, if I may be pardoned the expression, almost in the relationship of caddies to the Supreme Court. We carry the clubs and locate the ball—this in the sense of

simplifying the issue. Then, after they have made their stroke, the matter comes back for us, and we replace the divots.

Under such circumstances and conditions, it seems advisable to me that this case should be now decided. It is a work of supererogation, in the presence of this audience, many of whom have been here throughout the argument, as well as counsel, and members of the bar outside of the counsel in the case, to say that the Court has been favored with the most able and comprehensive of arguments. Cases have been adduced and analyzed with the greatest ability and clearness.

The principles involved are not new. The application is perhaps, as counsel have stated, a new one, but the principles are old; they are old as the Republic. They are old as political parties. They are matters upon which different schools of thought have differed throughout the history of this nation. The school of thought to which I belong, as well as that to which most of those here engaged before the bar of the court are involved, has no doubt whatever about the principles. The question is merely as to the application to a given state of facts.

I am further moved to this expeditious decision of the case, if I may be pardoned for speaking outside of the record in this court room, by the fact that I noted in the noon edition of the daily papers that the counsel in the case were so clear, and presented their argument with such simplicity that even a

schoolboy could fully understand the proceedings—and this is a great compliment to counsel in general. Perhaps there is a boomerang in it to counsel on one side, who have been so earnestly insistent upon something which, as is intimated, even a school boy could readily discern to be otherwise than as contained.

But, at any rate, I have no doubt of the duty of this Court here in the premises. Now as to the Federal Land Banks and their Farm Loan Bonds, I have no question of their validity, in any aspect. The meaning of the power to appropriate money—to levy taxes, which involves ultimate appropriation of money for the general welfare—is not a mere abstraction. When we speak of the appropriation of money—and that right is here conceded—we mean that the money is to be appropriated for some purpose within the power of Congress, some matter that is of flesh and blood, and not mere dry bones. Congress does not appropriate as a vain and empty thing, just for the sake of appropriating, but the appropriation is necessarily linked to and related to the object, and that object is something that comes within the power of Congress under the general welfare clause, so far as we have to deal with it today.

Now it is admitted that the stimulation of agriculture falls within that clause. It is admitted, or at least not denied, that the operation of this law would stimulate agriculture. Now if that is true, then the Congress is empowered at least to enter upon a project of this nature, and having entered upon it, it is

empowered to employ any reasonably apt and appropriate instrumentality to render it effectual. It seems to me that that covers the situation.

I am not insensible of the very able and appealing argument of counsel in the distinction that he has sought to draw. I feel very much in sympathy with him in that respect, because I have occupied that position myself.

I recall I argued once to the Circuit Court of Appeals of this Circuit, at the instance of the Treasury Department, which devises a theory and orders a District Attorney to argue it irrespective of the views of the District Attorney or of the Department of Justice, that in a case of attempted recovery of a claim against the Commissioner of Internal Revenue for war taxes—under the old Spanish War—improvidently and illegally collected, sought to be recovered under the Act of March 3rd, 1887, in which he was permitted to sue the Government directly, it was the view of the Treasury Department, as expounded by myself, that this was a tort, or a wrongful act in the execution of the law on the part of the Collector of Internal Revenue, and therefore that the suit could not lie under that particular Act, directly against the Government, unless, of course, it was founded upon an Act of Congress, and I sought, with great learning and ingenuity, to show that a claim of this kind was not founded upon the Act of Congress at all, but merely arose under the Act of Congress, and I told the Circuit Court of Appeals there

was a wide difference between a cause of action founded upon an Act of Congress, and a cause of action arising under an Act of Congress, and when I had completed the argument I thought very well of it myself, but Judge Sanborn, speaking for the Circuit Court of Appeals, said that because it had been insisted upon so earnestly, it had been given great consideration, but he was compelled, in the end, to confess that the distinction was "too subtle and elusive for the density of his understanding."

Now I am unable to distinguish between the right to appropriate for the general welfare, and the resulting right to use any instrumentality that is apt and appropriate, and related to the making of that Act effectual, and what is said about exceeding immediately the powers of Congress the moment the appropriation is made, because if that is so, we stop at the bald appropriation and we are never able to determine and make certain that that appropriation is not in vain, empty, nugatory, and of no effect.

Of course, it is admitted in this connection that the corporation is an appropriate instrument, which admission further approves of the mechanism employed by the Government. We have had all sorts of illustrations in the law and the decisions of the Supreme Court of the cognizance of this principle by that Court. There is the Pure Food Act. There is the Employers Liability Act, to which Justice Hughes referred.

There is the intimation, in the Minnesota Rate Cases, as to the power of Congress once it has entered the field, because when Congress does enter any field, under warrant of authority, it absorbs and appropriates that field so far as may be necessary to carry out the constitutional power of Congress, and it is intimated in the Minnesota Rate Case what may be done there when the Government, through the Interstate Commerce Commission, enters the field, as to intrastate rates as well as interstate rates—the decision in that case being, as I remember it, that Congress had not entered the field in that respect.

So in the case of *Wilson v. New*, which goes perhaps as far as any case possibly could, unless, perhaps, a line of cases that have not been referred to, and those are the cases arising under the Safety Appliance Acts. There the power of the Government attaches to the disjointed instrumentalities of interstate commerce, as evidenced by the rolling stock and appurtenances of the interstate carriers, wherever found, to such an extent that, in so far as the law is applicable, the matter is entirely withdrawn from State cognizance, and is left entirely within the power of Congress and of the Federal Government.

Now as to the Joint Stock Land Banks and their Farm Loan bonds, of course I think all those present will admit that there is a possible line of cleavage between the two. That is to say, it would appear, almost, that you could take some sharp instrument

and cut the Joint Stock Land Banks out of the Act, and that the Federal Land Banks and their bonds, would function just the same. That is, there is no absolute connection, insofar as the system, as a system, is concerned, between the two, but it has been pointed out that these banks are to serve a different class of customers, those who require larger loans; that they have a distinct function to perform, along the same line as the Federal Land Banks.

They are incorporated into the same Act. We can not leave out of mind that one great system is here being created, comprehensive in its nature, containing many parts, and all so interwoven and inter-related that each performs its appointed part in the development and administration of the entire system.

It may be said—perhaps the Supreme Court may say—that they are so far separated from, and not so necessarily connected with the system that they may be taken out, taken apart, and dealt with separately, but certain it is that they are thoroughly germane to the system, and certain it is that they have been dealt with in one comprehensive, systematic plan.

That being so, it does not seem to me, when I take into consideration the fact, also, that they have been, even though arbitrarily, created depositaries of the Government, created as financial agents of the Government, that the arguments against them are so clear and convincing as they must be to warrant a Court of first instance to overcome the presumption

of constitutionality which must prevail, and to declare these Acts unconstitutional, even as to the Joint Stock Land Banks.

I am aware that in a certain very conspicuous instance, the court, in the interest of expedition, has deemed it wise to indulge the presumption of unconstitutionality in the first instance, instead of constitutionality. That is something that I can not bring my mind to accept, and when these banks are thus designated as banks—as depositaries, and as financial agents, why, if the use is conceded in any degree, this Court can not consider the degree of their usefulness in that regard.

It stands there as the deliberate judgment of Congress that they are such, they are adapted to the use—even though their powers may have to be enlarged to make them most useful, they are adapted to the use that Congress has assigned them. That being so, all things considered, and there being no question here, nor can be in this court, as to the wisdom and practicability of this system, then in the absence of any complete unadaptability, the Court must accept their status as declared.

But whatever might be my view on these Joint Stock Banks, certainly the matter must go to the Supreme Court.

Upon one branch of the question, as I say, I am unreservedly without doubt. Upon the other, I may say, also, that I have very little, if any, doubt, although I concede that there is a more debatable ques-

tion there presented, but certainly there ought not to be a division of the questions here involved.

There ought not to be any action taken which would halt a great public enterprise, certainly, as has been pointed out, to the very great disadvantage of its operation, and of the interests of parties who are dealing with it, but the whole question should be passed upon finally, as speedily as possible, and with the least inconvenience to any one concerned, by the Supreme Court, and in view of the considerations that I have just superficially and informally announced, that counsel may know the reasons for my action, the decree will be that the bill be dismissed for want of equity, and an appropriate order may be prepared.

FINAL DECREE.

This cause coming on for hearing this 31st day of October, 1919, the plaintiff appeared by William Marshall Bullitt and Frank Hagerman, his solicitors, the defendant by its solicitor, Justin D. Bowersock, the United States by its solicitor, William G. McAdoo, the intervenors, Federal Land Bank of Wichita, Kansas, by its solicitor, Charles E. Hughes, and First Joint Stock Land Bank of Chicago, Illinois, by its solicitors, William G. McAdoo and George W. Wickersham. By consent of all the parties and by leave of court the bill was amended by interlineation which amendatory matter shall at all times and

under all circumstances be treated as if in the original bill as and when filed. The United States and each of said intervenors, to speed an early disposition of the cause, adopt as their own and were heard upon the motion to dismiss, filed by defendant. Thereupon the Court heard counsel and, being fully advised in the premises, sustained said motion. Plaintiff then electing not to further plead,

IT IS ORDERED, ADJUDGED AND DECREED that the bill (including each intervening petition) be and the same is hereby dismissed.

Plaintiff in open court filed its assignment of errors, presented its appeal bond and prayed an appeal to the Supreme Court of the United States. The said bond is approved and said appeal is granted.

ARBA S. VAN VALKENBURGH,
United States District Judge.

Dated at Kansas City, Missouri, October 31st, 1919.

On October 31, 1919, the plaintiff filed his petition for appeal, assignment of errors, appeal bond and stipulation which are referred to in the above decree and are as follows:

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION
OF THE WESTERN DISTRICT OF
MISSOURI

Charles E. Smith, - - - Plaintiff,

vs.

Kansas City Title and Trust
Company, - - - Defendant,
Federal Land Bank of Wichita,
Kansas,
and
First Joint Stock Land Bank
of Chicago, Illinois, - - Intervenor

No. 212

PETITION FOR APPEAL.

Now comes the plaintiff and prays for an appeal to the Supreme Court of the United States from the decree this day entered herein, its assignments of error being hereto attached and made part hereof.

WM. MARSHALL BULLITT,
FRANK HAGERMAN,

Solicitors for Plaintiff.

ASSIGNMENTS OF ERROR.

This Court erred in:

1. In decreeing a dismissal of the bill.
2. In holding to be valid and constitutional each of the Acts of Congress of July 17, 1916, and January 18, 1918, mentioned in the bill.
3. In holding to be valid and constitutional each of the sections 21, 26 and 27 of said Act of July 17, 1916.
4. In holding that defendant can lawfully invest in and purchase Federal Land Bank bonds.
5. In holding that the defendant can lawfully invest in and purchase Joint Stock Land Bank bonds.

WM. MARSHALL BULLITT,

FRANK HAGERMAN,

Solicitors for Plaintiff.

Issue and service of a citation herein waived. Appearance in the Supreme Court hereby entered. Consent given to the docketing of the appeal as one cause and to the advancement of the cause for hearing at the earliest practicable date.

It is stipulated that, upon any appeal by any party to the Supreme Court of the United States from the final decree herein, the record shall consist of the following papers and no others:

1. Bill in Equity, as amended.
2. Motion to dismiss, and orders of intervention.

3. Final decree, and opinion of District Court.

4. Petition for appeal, assignment of error, and this stipulation.

It is stipulated that by proper proceedings, the Federal Land Bank of Wichita, Kansas, and the First Joint Stock Land Bank of Chicago, Illinois, intervened and were made parties defendant, and that the United States was heard *Amicus Curiae*.

ATTORNEY GENERAL,

By W. G. McADOO,

Special Assistant for U. S.

JUSTIN D. BOWERSOCK,

Solicitor for Defendant.

CHARLES E. HUGHES,

Solicitor for Intervenor

*Federal Land Bank of
Wichita, Kansas.*

W. G. McADOO,

GEO. W. WICKERSHAM,

Solicitors for Intervenor

*First Joint Stock Land
Bank of Chicago, Illinois.*

WM. MARSHALL BULLITT,

FRANK HAGERMAN,

Counsel for Plaintiff.

Allowed this October 31, 1919.

ARBA S. VAN VALKENBURGH,

Judge.

United States of America, Set.

Know all men by these presents, That we, Charles E. Smith are held and firmly bound unto Kansas City Title & Trust Co., United States of America, Federal Land Bank of Wichita, Kansas, and First Joint Stock Land Bank of Chicago, Illinois, in the full sum of two hundred and fifty dollars to be paid to the said obligees there heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seal, and dated this 31 day of October, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at the April term of the District Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between Charles E. Smith, plaintiff, and Kansas City Title & Trust Company, *et al.*, intervenors and defendant, a decree was rendered against the said plaintiff and the said plaintiff has obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said defendants and intervenors citing and admonishing them to be and appear in the United States Supreme Court, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said appellant shall prosecute said appeal to effect, and answer all damages and costs if appellant fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Signed and sealed in presence of

CHARLES E. SMITH,

By WM. MARSHALL BULLITT [SEAL.]

FRANK HAGERMAN [SEAL.]

His Attorneys

FRANK HAGERMAN [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

ARBA S. VAN VALKENBURGH,
Judge.

United States of America, set.:

I, EDWIN R. DURHAM, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors, and all proceedings in the cause wherein Charles E. Smith is plaintiff and Kansas City Title and Trust Company is defendant, No. 212 in Equity, as fully as the same appear on file and of record in my said office, in accordance with stipulation filed herein and made a part hereof.

EDWIN R. DURHAM,
Clerk U. S. District Court.



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UNITED STATES

DEPARTMENT OF JUSTICE

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UNITED STATES DEPARTMENT OF JUSTICE

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1919.

CHARLES E. SMITH, - - - - - *Appellant,*
vs.

KANSAS CITY TITLE AND TRUST
COMPANY, ETC., - - - - - *Appellees.*

Appeal from the District Court of the United States, for
the Western Division of the Western District
of Missouri.

MOTION TO ADVANCE.

The appellant, CHARLES E. SMITH, moves that this cause be advanced for hearing at an early date, for the following reasons, to-wit:

(1) The sole question involved is the constitutionality of the Federal Farm Loan Act of July 17th, 1916 (39 Stat. 360) as amended January 18, 1918.

(2) Bonds have been and are being issued pursuant to the provisions of the Act, and the real question at issue is whether or not they are exempt from all State and Federal Taxation.

(3) This case is of great public interest to the Federal Farm Loan Board, to the many Federal Land Banks and Joint Stock Banks, and to the investors and borrowers of the country, and an early hearing is very desirable.

**WM. MARSHALL BULLITT,
FRANK HAGERMAN,**

Counsel for Appellant.

We concur in the above,

CHARLES E. HUGHES,

Counsel for Federal Land Bank, of Wichita, Kansas.

WILLIAM G. McADOO,

GEORGE W. WICKERSHAM,

*Counsel for First Joint Stock Land Bank of Chicago,
Illinois.*

WILLIAM G. McADOO,

*Special Assistant to the Attorney General, for the
United States as Amicus Curiae.*

I concur in the above,

JUSTIN D. BOWERSOCK,

Counsel for Kansas City Title & Trust Co.

COPY

FILED

JAN 5 1930

JOHN R. GARDNER

JOHN R. GARDNER

**In the
Supreme Court of the United States**

October Term, 1929.

No. 199

CHARLES E. SMITH, Appellant,

vs.

**KANSAS CITY TITLE & TRUST COMPANY et al.,
Appellees.**

**Appeal from the District Court of the United
States for the Western Division of the
Western District of Missouri.**

APPELLANT'S BRIEF.

**WM. MARSHALL DOWNEY,
FRANK HANDELMAN,
Solicitors for Appellant.**

VERIFIED AND SUBMITTED

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In the
Supreme Court of the United States
October Term, 1919.

No. 593.

CHARLES E. SMITH, *Appellant*,

VS.

KANSAS CITY TITLE & TRUST COMPANY ET AL.,
Appellees.

APPELLANT'S BRIEF.

STATEMENT.

1. THE GENERAL NATURE OF THE CASE.

This is an appeal (Rec. 3) from a decree (Rec. 30) below dismissing a bill (Rec. 1-19) filed to test the constitutionality of the various provisions of the Federal Farm Loan Act of July 17, 1916, as amended on January 18, 1918 (8 Fed. Stat. Ann. Supp. 1918, pp. 14-42; 39 Stats. L. 360; 40

Stat. L. 431.) The United States (Rec. 30, 31, 34) and the Federal Land Bank of Wichita, Kansas (Rec. 20, 30, 31, 34), and the First Joint Stock Land Bank of Chicago, Illinois (Rec. 19, 30, 31, 34), representing the *two* classes of banks named in the Act, all *voluntarily* became parties, took practical charge of the defense (Rec. 31) and are now here as appellees, seeking to obtain a speedy decision *on the merits* of all questions raised as to the validity of said Act and its tax exemption features.

2. THE PROCEEDINGS BELOW AND THE APPEAL.

Appellant, plaintiff below, is a large stockholder in the appellee, defendant below, which is a corporation organized as a trust company under the laws of Missouri (Revised Statutes Missouri 1909, Chap. 12, Arts. I, II and III; Laws of Missouri, 1915, pp. 103-127, amending same; sec. 127, subd. 11, p. 167; Laws Mo. 1915, pp. 165-167), providing:

"Corporations may be created * * * for any one or more of the following purposes:
* * * 11. To buy, invest in and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks or other investment securities."

A trust company is thereby authorized to *invest* its corporate and trust funds in such bonds as, in the eyes of the law, are *real* legal "investments,"

as distinguished from those which are unauthorized and pretended. The statutory power to deal in bonds is only "to buy, invest in and sell all kinds of government, state, municipal and *other* bonds and all kinds of negotiable and nonnegotiable paper, stocks or *other* investment securities." These last words necessarily imply that any outlay of funds for securities which are not "investments" is illegal, unauthorized and *ultra vires*. So it was held by Circuit Judge Thayer in *Bierce v. Guardian Trust Company*, in an unreported opinion, a copy of which is attached (*Infra*, p. 81) as Part 1 of the Appendix hereto. Investments within this view do not include bonds or stocks of any corporation which are of a speculative or other doubtful nature (17 A. & E. Enc. L., 2d Ed., 438, 440, 443, 444; *Lamar v. Micou*, 112 U. S. 452), and cannot be made in *illegal* bonds issued by an *illegal* organization under an unconstitutional statute (*id.*) because (*Norton v. Shelby Co.*, 118 U. S. 425) "an unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is in legal contemplation as inoperative as though it had never been passed."

If a corporate fiduciary, as defendant is, wished to make an investment in securities of such character, it might have absolutely protected itself by applying to and obtaining from a court specific directions in the premises, the courts "having large powers of supervision over the investment of funds held by fiduciaries" (*id.* 431). If appellee would not, in this way, even ask any relief, manifestly a good faith protesting stockholder can, in the

absence of its *voluntary* action, have an injunction against a proposed improper and illegal venture. Such was the theory of the bill. The course of this case shows, and all interested therein, including appellees' eminent counsel, now concede the propriety thereof. In its most simplified form, the case presented was one where the directors of the corporate defendant, over the objections and protests of the stockholding plaintiff, proposed and threatened to *invest* its corporate and trust funds in bonds issued under the Farm Loan Act, *not only* by the Federal Land Banks, but *also* by the Joint Stock Land Banks. Thereupon plaintiff filed his bill (Rec. 1-18) to enjoin as illegal and *ultra vires* each proposed and threatened action. The claim was that the act (8 Fed. Stat. Ann. Supp. 1918, pp. 14-42; 39 Stat. L. 360; 40 Stat. L. 431), and the tax exemption (secs. 21, 26) features thereof were unconstitutional and, hence, the bonds of *neither* bank were *real* "investments." The case grew into one of great proportions and of national importance. The government, as well as each of the defendant banks, recognized that *all* questions as to the validity of the act authorizing the bonds and all tax exemption features thereof were thereby fairly and satisfactorily presented. They *voluntarily* came into the case, assumed charge of the defense, presented, *on the merits*, the sole constitutional question involved and convinced the court below that it should uphold (Opinion, Rec. 22-30) the Act. The bill, so as to more fully present the case, was, *at the suggestion of the Government and these banks*, in certain unnecessary respects,

amended (Rec. 34) by interlineation. Thereupon defendant filed a motion to dismiss (Rec. 31) because, *as thus amended*, it did not state facts sufficient to constitute a cause of action. The United States appeared (Rec. 30, 31, 33, 34) *amicus curiae*. Both banks, agencies established by the Act, upon their intervention (Rec. 19, 20, 30, 31, 34), became parties defendant. They and the United States were permitted (Rec. 31) to and did "adopt as their own and were heard upon the motion to dismiss." This motion was sustained and a decree (Rec. 30, 31) entered dismissing the cause. Thereupon an appeal (Rec. 31) was allowed, the case brought here (Rec. 32-36), where all formalities were waived. Upon stipulation (Rec. 33, 34) it was advanced and is now here for final presentation.

3. QUESTIONS INVOLVED ARE THE VALIDITY OF THE FARM LOAN ACT AND ITS TAX EXEMPTION FEATURES.

The sole questions involved are whether that which, by its terms, is designated as the Farm Loan Act (39 Stat. L. 360; 40 Stat. L. 431), establishing *each* class of banks, and its sweeping tax exemption features (secs. 21, 26) are violative of some express or implied provision of the Constitution.

4. GENESIS OF THE ACT.

In 1913, a three months' European summer trip, commonly called a junket, was taken by a United

States commission composed of Congressmen of one political faith, and by a number of delegates appointed by the Southern Commercial Congress, a voluntary convention or association of citizens. (64th Congress, Senate Document 500, p. 29.) The latter was headed by one David Lubin, who was described as a "delegate of the United States International Institute of Agriculture, Rome, Italy," whatever that may mean. In a speech before the Commission, Mr. Lubin (63d Congress, 1st Session, Sen. Doc. 114, p. 4) declared that the members thereof and the delegates were "at the feet of the German people to learn." A propaganda was afterwards started in Congress for the establishment in this country of a system of *rural* credits, based upon the German plan of collective and co-operative borrowing and lending of money on long-time farm mortgages. The words "German plan" are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany. Some modifications thereof have, however, been adopted and are in operation in other parts of Europe. It is quite significant that the plan is German, as the real question here is whether there has been enacted a law inimical to the spirit of our institutions and contrary to the provisions of our Constitution. The commissions, confessedly, studied only European (not American) conditions and obtained a large amount of data about foreign methods. They came home enthusiastic about the German land mortgage scheme. Then followed extended public addresses, reports and discussions (63d Cong. 1st Sess. Sen. Docs. 17 and 214; 2nd

Sess. Sen. Docs. 261 and 380; 64th Cong. 1st Sess. House Doc. 494; House Rep. 630; Sen. Doc. 472; 64th Cong. 1st Sess. Sen. Doc. 9; 63d Cong. 1st Sess. Sen. Doc. 114; same Sess. hearings on Rural Credits before House Sub. Com. of Com. on Banking and Currency and Joint Hearings on Rural Credits, before Subcommittees of Senate and House Committees on Banking and Currency). The most prominent characteristic thereof was the constant citation of German methods as an argument for our adoption of something of the same kind. A fair sample is found in an address (6th Cong. 1st Sess. Sen. Doc. 9, p. 21) of Senator Sheppard, of Texas before the Texas Farmers' Congress on Aug. 3, 1915, devoted to a glorification of German methods, a plea for their imitation here, and an argument that the nearer the American people approach the German system, "the more successful we will be." Merely because the system is German does not *necessarily* imply that it is illegal. There may or may not be some excellencies in all or any of the various European plans. Such plans may be adaptable to foreign conditions, where class discriminations may be made and the right of local authorities to tax local property may be denied. The real inquiry is whether they can be adopted here, where totally different conditions prevail and constitutional limitations exist. The Act was approved (39 Stat. L. 360) July 17, 1916. This, however, was *before the war*. Hence, no exercise of a war power is involved, and any such thought may be dismissed. The nearest the war got to the scheme was that the government, under the amend-

ment of January 18, 1918 (40 Stat. L. 431), temporarily loaned for its support, money presumably extracted from the people for war purposes. The purpose of the Act was, not to have performed any governmental function, but solely to give, by *private* means, the farm owners, as distinguished from all others, money upon "easy terms," or, as put by the then Secretary of the Treasury Mr. McAdoo, "*long-term mortgages at low rates of interest,*" with a provision for repayment of the principal in annual installments, "*so that the small farmer,*" to the exclusion of all others, could borrow and pay off both principal and interest "through annual installments which will be less than the straight interest charges he has been paying on his mortgages under the old system." To find a ready market for these loans, wholly *private* in their nature, they and all the *private* capital invested therein were attempted to be wholly withdrawn from *all* state and federal taxation. The organizations charged with the execution of the Act were merely commission agents, and in an attempt to accomplish the desired result, were glibly miscalled banks and "instrumentalities of the government." As this case presents the question whether, under our system of government, the law is valid, there must be herein a determination, *not* of what the act or the agencies (Federal Land Banks or Joint Stock Land Banks) appointed to carry it out are called, *but what they really are*. Put in still more concise form, the real question, regardless of the use of mere words, is whether the *main* purpose of their establishment was to have exercised the

governmental power of the nation, as distinguished from those respecting *private* and *proprietary* rights, which, however owned, arise solely out of and adhere in the ownership and control of *private* property.

5. PASSAGE AND THEORY OF THE ACT.

(a) The advocates of the scheme and their adherents had framed and passed the Farm Loan Act. It was based upon the seeming thought that although the 10th Amendment to the Constitution reserved to the states all the powers not granted to the United States (and none were so granted as to a Farm Loan Act), yet since *general* banking was a *governmental* function, there was *implied* the power to establish such agencies, calling them Federal Land Banks and Joint Stock Land Banks, just as had been *implied* the power to establish national banks.

(b) The lawmakers evidently overlooked the thought which prompts this appeal, that it was not permissible for them (*First National Bank v. Union Trust Co.*, 244 U. S. 416) to organize an institution not "of a *governmental*," but *mainly*, if not entirely, "of a *private* character," ignore the difference between or the scope and character of "*governmental*" and "*private* powers," and treat the latter as a wholly immaterial consideration. Anyhow, agencies were provided, the *main* purpose of which was to exercise merely *private* powers. They were called banks and "*instrumentalities* of the government," though nothing could have been further from the fact.

(c) Anyhow, there was passed the Act, the validity of which is now challenged.

6. SUBSTANCE OF THE ACT.

The Act outlines a scheme of creating for borrowers and lenders *private* corporate borrowing and lending agencies. These agencies were not to do any *general* banking business (that being expressly forbidden), but their energies were to be *exclusively* confined to lending on farm mortgages, first, \$10,000 or less to actual *cultivators* of the soil with which to buy or improve the land, and, second, *unlimited* sums to *any* person for *any* purpose whatsoever. In its most concise form the scheme created and classified the agencies into corporations *named* National Farm Loan Associations, herein called Farm Associations, Federal Land Banks, herein called Land Banks, and Joint Stock Land Banks, herein called Joint Stock Banks. The *alleged* banks are, however, only such in *name*. They can do no banking business. They are of two distinct kinds, the nature of which call for *separate* consideration.

(1) Land Banks.

(a) Each of any ten or more *cultivators* and owners of *farm* land may mortgage same for not more than \$10,000, but only to buy or improve it. They must, however, *first* form a corporation known as a Farm Association. This corporation, made up exclusively of borrowers, acts just like a

broker or commission agent ordinarily does, as a borrowers' agency. In addition, it endorses the paper of each borrower, thus, in a way, putting all borrowers behind the obligation. Each borrower subscribes and pays for his stock in a sum equaling five per cent of the loan. This sum is added to and made part of the mortgage. The Farm Association must, however, apply to and obtain the money from a Land Bank, and, as a condition of so doing, must take and pay for the bank's stock in a sum also equal to five per cent of the loan.

(b) The *first* money loaned the borrowing farmers was, in the main, obtained from the government by it subscribing and paying for about \$750,000 of each Land Bank's stock. While the government did so take the stock, it could receive no dividends thereon. Each transaction by it was, therefore, practically a government loan without interest. The Farm Association, as business justifies it, must take over this government Land Bank stock with the money paid in by future borrowers in payment of their stock subscriptions.

(c) The Land Bank, having acquired the farm mortgage loans, can raise *new* money for like *future* investment by selling its collateral trust bonds secured thereby. This is the extent of its office.

(d) When the Farm Association has taken up the government's *temporary* loan, held in the form of Land Bank stock, the government's interest in the scheme entirely ceases. The borrowers then become sole owners and step into absolute control of the bank or borrowing agency.

(2) Joint Stock Banks.

The government can never have any interest in, but individuals *only* can organize, own and control Joint Stock Banks. These *alleged* banks can loan to *any one* on *farm* lands, in *unlimited* amounts, and without any restrictions as to the use to be made of the money. Such a bank can, without restriction, issue and sell its collateral trust bonds with its mortgages as security.

(3) Exemption from taxation.

To induce investors to continue to furnish the money for the Land Bank business, or even *start* into that of the Joint Stock Bank, a *huge* price is paid, if tax exemption can be considered a "price," as it actually is. The securities are entirely withdrawn from the domain of the states and arbitrarily made exempt from any kind of taxation, state or federal. This is done by simply, but falsely, *calling* them "instrumentalities of the Government." This plain method of depriving a state of its revenue, if carried far enough, can destroy any local government by taking from it the means by which it is supported.

(4) Attempted justification of the arrangement.

By treating the scheme as one to do a *general* banking business, which each of such agencies is expressly prohibited from doing, it is sought to justify its adoption as an exercise of an implied *governmental* power. The *real* question, then, is

whether by the use of *mere words* this can be done, when the *real* fact is that the *main* purpose of these corporate agencies is *not* to do any banking business and *not* to perform any *governmental* function, as distinguished from one which is strictly *private*. If the *main* purpose is to use the system for *private* and *proprietary* purposes, and any governmental function is to be exercised only as an incident thereto, or as a cloak to disguise the *real* purpose, then the power to pass the Act cannot be implied.

7. MISLEADING AND DECEPTIVE TITLE.

The title to the Act is:

An act to *provide for agricultural development*, to create a standard form of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to *furnish a market for United States bonds*, to *create government depositaries and financial agents for the United States and for other purposes.*"

None of the italicized words has, however, the slightest relation to anything appearing in the body of the Act. Tested by its provisions, the title should have been limited "to creating a form and method of borrowing on an investment in *farm* mortgages, and exempting same from *any kind* of taxation, state or federal." The Act should, at most, as its terms state (sec. 1), have been called a "Farm Loan Act," leaving to imagination the subjects with which it dealt. A close

analysis, at the expense of some tediousness, must be made of *all* its terms so as to avoid being, in any wise, misled by the title. At the same time, such an analysis will better enable one to clearly determine whether a foreign, un-American scheme has been adopted which not only destroys the substantial rights of the states, but also wholly fails to accord with the spirit of our institutions, as outlined in the express provisions of the constitution. In making the analysis, there must be kept clearly in mind the apparent distinction recognized below (Rec. 27, 30), but not there enforced, between the *different* things to be done by the *so-called* Land Banks and by those *called* Joint Stock Banks. The latter (sec. 16) have not even a *pretended* substantial connection with the government and perform no real office for it. Hence, there is not the slightest excuse for calling (sec. 26) loans made to or bonds issued by them "instrumentalities of the Government," even if one could fairly so call them when the loans were made to or bonds issued by Land Banks.

It will tend to clearness to constantly keep in mind the *separate* and *distinct* part of the legislative scheme which is played by each class of these agencies or alleged banks. This can best be done by (a) first considering the Act as if it created (as it was *originally* designed), the Land Banks as the *sole* agencies through which the money to loan small farmers was to be obtained from the investing public and then (b) following these considerations with a concise but *separate* statement of the few words, evidently inserted as

a pure afterthought, which provide for the Joint Stock Banks, which were created, in the interest of large, tax-dodging investors, and became *additional* like agencies to afford a device for such investors lending *unlimited* quantities of *tax-free* money.

8. ANALYSIS OF THE ACT SO FAR AS IT CONCERNS LAND BANKS.

The real scheme was, so far as concerned *small* cultivating farmers, to dispense with all services for borrower and lender by the ordinary broker or go-between and substitute therefor a plan with corporate *agencies*, whereby (a) these *farmers* could, through one of the agencies, borrow *cheap* money on *long-time* first mortgage farm loans, and (b) the funds to be loaned them raised by another agency, organized for that *sole* purpose, upon collateral trust bonds secured by the mortgages.

When closely analyzed, omitting the details of the various provisions creating and defining duties to be performed by a horde of office holders, the Act as amended, so far as it relates to Land Banks, will be found to be this:

(1) Title of Act and its administration.

The vice of the real title is recognized and a short, undefined one, Farm Loan Act, is substituted. The administration of the Act is placed under the direction and control of the Federal Farm Loan Board, herein called the Board (sec. 1).

(2) Definitions.

First *farm* mortgages and *farm* loan bonds are made a class of themselves, and are defined to be (a) *such* mortgages on *farm* lands as are approved by the Board, and (b) such collateral trust bank bonds as are secured by such mortgages deposited as collateral with an appointee named as a Farm Loan Registrar, herein called the Registrar (secs. 2, 3).

(3) The Board.

The Board is made a bureau of the Treasury Department. It consists of five members, including the Secretary of the Treasury. The other four members are appointed by the President and confirmed by the Senate. One of the four must be named as Farm Loan Commissioner. He acts as the executive officer (sec. 3) of the bureau.

(4) Land Banks.

(a) The raising of money from investors, so as to make *farm* loans to *farmers*, was the first essential of any possible plan, for it is manifest that if there was not provided money to loan, the whole scheme would fail. In lieu of obtaining an absolute donation from the government or calling, as in the ordinary case, for the ordinary brokers' services with private investors, corporate agencies were created for the purpose of acting as the necessary go-betweens to reach those expected to borrow and those expected to furnish the funds to be loaned. These agencies, omitting for the

present any reference to Joint Stock Banks, are *in name* called Land Banks, though they perform no function of and bear no resemblance to real banks. They are created by the Board, which divides continental United States, excluding Alaska, into twelve districts, in each of which it establishes such an *alleged* bank as a federal corporation. On the filing of an "organization certificate," the corporation is created (sec. 4). The Board appoints five directors to *temporarily* manage it. This temporary management ceases and the *permanent* directors take charge (secs. 4 and 32 as amended) whenever, first, the Farm Association, another agency (but strictly a borrower's), hereinafter described, has subscribed \$100,000, second, any Land Bank stock subscribed by such associations equals that held by the government (40 Stat. L. 431), and third, the agency or alleged bank has retired all its bonds, if any, purchased from it by the government under the amendment of January 18, 1918.

(b) Each of such Land Banks, before beginning business, must have a subscribed minimum capital of \$750,000. The capital is divided into five-dollar shares. The government or any one else may subscribe therefor. As an assurance of money with which to *start* in the loan business, the Secretary of the Treasury must, for the government, if, within thirty days after the stock subscription books are opened, any part of such minimum capital remains unsubscribed, subscribe therefor. The same is to be paid out of any unappropriated money. This, in the first instance,

for the twelve agencies or *alleged* banks, was an assurance that there would be at least \$9,000,000 to loan. This was to be, in effect, a *temporary* government loan, without interest, for this government stock must be subsequently retired by the Farm Associations through loans subsequently made. The government receives no dividends, though on all *other* stock they are paid, if and when earned. After its *temporary* subscription is retired, bank stock only can be issued in connection with mortgage loans, i. e., upon every loan the borrower takes Farm Association stock in a sum equaling five per cent of the loan. The latter, in presenting to the Land Bank an application for a loan, must itself subscribe for stock of the bank for a similar amount. The government and any Farm Association is entitled to one vote for each share of stock owned by it. No *other* shareholder can, however, vote (sec. 5). The effect is that each Land Bank is formed as, and ultimately is to become, a borrowers' agency and will receive all of the profits thereof.

(5) Powers of Land Banks.

(a) Upon the approval of the Board, each agency or Land Bank can, through a Farm Association, or certain of its agents, but not otherwise, make farm loans and issue and sell its own collateral trust farm loan bonds secured by a deposit of such loans with the Registrar of the district. It can, however, do no banking or *other* general business (sec. 13).

(b) No such agency or Land Bank can loan, except on the first *farm* mortgages, taken as specifically provided, nor issue nor obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, nor receive from any Farm Association additional mortgages when the unpaid principal upon existing mortgages, theretofore received therefrom, exceeds twenty times the amount of the Land Bank stock owned by it. No commission or charge, other than as specifically authorized (sec. 14), can be made or demanded.

(c) Every such agency or Land Bank must carry semi-annually to reserve 25 per cent of its net earnings until the reserve account shall show a credit balance equal to 20 per cent of its outstanding stock. Thereafter, it must annually carry to reserve account five per cent of its net earnings. Its reserves are to be invested in accordance with the rules of the Board (sec. 23).

(6) Land Bank Mortgage Loans.

No *farm* loan can exceed \$10,000, and one cannot be made to other than a *cultivator* of the land. The loan must be obtained and used solely to (a) purchase or improve *farm* lands or provide equipment thereon, or (b) to liquidate existing indebtedness therefor. Interest shall not exceed six per cent, but the rate shall be the same as that in the last series of farm loan bonds issued by the Land Bank making the loan with not more than one per cent added. The rate actually charged

may, however, from time to time, be altered by the Board, so as to have, as far as practicable, uniform rates.

(7) Land Bank Farm Loan Bonds.

(a) Farm loan bonds in series of not less than \$50,000, the amount and terms to be fixed by the Board, secured by *farm* mortgages may, upon the approval of the Board, be issued by any Land Bank (sec. 20) in specified denominations to run for specified minimum and maximum periods, subject to payment and retirement at any time after five years from date. Interest coupons, payable semi-annually, are to be attached, but the rate of interest must not exceed five per cent.

(b) The Secretary of the Treasury must prepare, and the Board approve, suitable bonds. The expense of the preparation, custody and delivery of the bonds is first paid by him out of any public moneys not otherwise appropriated. This, again, is but a temporary loan, for *reimbursement* must be effected through proportionate assessments on the different Land Banks.

(c) The bonds may be exchanged into registered bonds of any amount and re-exchanged into coupon bonds, at the option of the holder, under rules prescribed by the Board (sec. 20).

(d) On application by any Land Bank to the Board for approval of an issue of bonds, it must tender to the Registrar of the district, as collateral security, first *farm* mortgages or government bonds, not less in the aggregate than the

amount of the proposed issue. The Board, upon investigation and appraisalment, may, in whole or in part, grant or reject an application to issue bonds (sec. 18).

Every agency or Land Bank which issues bonds is primarily liable for the principal and interest thereof and for the principal and interest of any such bonds issued by any *other* Land Bank. The Farm Loan Commissioner, an officer named for the purpose, must on each bond certify that it is issued under the authority of the Federal Farm Loan Act, has in form and issue the approval of the Board, is legal and regular in all respects, is issued against collateral security in a designated amount and consists of United States government bonds and first farm mortgages, and that *all* Land Banks are liable for the payment thereof (sec. 21). Any farm loan bond is a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits. It may be bought and sold by any bank member of the Federal Reserve System and any Federal Reserve Bank may buy and sell same to the same extent and subject to the same limitations as in the case of state, county, district and municipal bonds (sec. 27).

(e) The loans shall be amortized. All amortization or other payments on the principal of mortgages securing farm loan bonds shall constitute a trust fund in the hands of the Land Bank to be applied to (a) pay off farm loan bonds issued by it as they mature, (b) purchase at or below par its own farm loan bonds or those issued

by any other Land Bank, (c) loan on qualified first farm mortgages, or (d) purchase government bonds (sec. 22).

(8) Farm Associations.

(a) To obtain, for borrowers, exclusive services, like those ordinarily rendered by real estate commission agents or brokers, there are by the Board established borrowers' corporate agencies, known as Farm Associations. Such corporations can only be formed by those persons recommended by a Land Bank who borrow money on *farm* mortgage security. No one, other than a borrower, can hold any of the stock. Therefore, the Farm Association is owned and controlled solely by the borrowers. The corporate charter must designate the territory in which loans can be made (sec. 7). The stock bears a double liability and the shares are limited to \$5 each. Every borrower must, in order to get a loan, subscribe for stock equaling in amount five per cent of his loan (sec. 8), and to get the money to pay for same, he can add the amount to his mortgage. The Farm Association, in turn, must, when applying for the loan, subscribe for a similar amount of stock in the Land Bank of the district and pay for same when the mortgage is retired. The effect is, therefore, that the borrower takes and pays for the stock of the Land Bank, which is his own agency to reach the investors.

(b) Whenever the subscription of the Farm Association to the capital stock of any Land Bank

equals \$750,000, the bank must, until its original capital (that which the government *temporarily* takes) is retired at par, to that end apply to its retirement 25 per cent of all sums thereafter subscribed. Thereupon the relation of the agency or bank to the government *entirely* disappears. It then becomes absolutely the property of the borrowers.

(c) At least 25 per cent of that part of the capital of any Land Bank outstanding in the name of the Farm Associations must be held in quick assets. These may consist of deposits in member banks of the Federal Reserve System, or in readily marketable securities approved by the Board, but not less than five per cent of such capital shall be invested in government bonds (sec. 5).

(d) The Farm Association must, as the agent for the borrower, make application for and endorse and become liable for the loan and attend to all the details of making it. A loan, when made, is to be paid over to it by the Land Bank, and the Farm Association, in turn, must pay it over to the applicant.

(e) The Farm Association, as an evident aid to borrowers desiring to accumulate funds with which to make their payments, may issue certificates against deposits of current funds for not more than a year, bearing interest at not to exceed four per cent after six days. Such deposits, when received, shall be forthwith transmitted to such Land Bank, to be by it invested in Land Bank bonds or first *farm* mortgages (sec. 11).

(f) Such association can do no other and no general business (sec. 11).

(9) Land Banks may be designated as government depositaries.

(a) All Land Banks may, by the Secretary of the Treasury, be designated as depositaries of public money, excepting receipts from customs. They may also be employed as financial agents of the government. They must in these capacities perform all reasonable duties which may be required of them. These are mere incidents to, not the *main* purposes of, the scheme. The Secretary of the Treasury must require from the banks thus designated satisfactory security, by the deposit of United States bonds, or otherwise, for the faithful performance of their duties. No government funds deposited with such banks can be invested in farm mortgage loans or farm loan bonds (sec. 6). Up to the present time, no Land Bank has been designated as a depositary of public money, nor, except in the specific instances hereinafter mentioned, been employed as a financial agent of the government. No one of them has performed any duties as such depositaries, or financial agents, nor have they or any of them accepted any deposits or engaged in any banking business (Bill, Rec. 10), except that during the summer of 1918, the Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the government for the *sole* purpose of making seed grain loans to drought-stricken farmers. The President, at the request of the Secre-

tary of Agriculture, set aside, out of his \$100,000,000 of war funds, \$5,000,000 for that purpose. These three banks made upwards of fifteen thousand seed loans, aggregating \$4,500,000, all secured by crop liens. In making these loans, the three banks acted without compensation. This, under a joint circular of the Treasury and Agricultural Departments, which allowed actual expenses, but no more (Bill, Rec. 10).

(10) Actual operations under the Act and government temporary aid authorized by and extended to Land Banks under the amendment of January 18, 1918.

(a) Organized in 1916, the Board began active operations early in 1917. It is a matter of common knowledge that American investors looked upon the whole scheme as political, sectional, speculative, or as class legislation of a vicious nature. Anyhow, they would not buy the farm loan bonds. In June, 1917, the Board, which to exist had to create a market, with the aid of a resourceful Secretary of the Treasury, made an agreement with a powerful New York banking syndicate to sell and the syndicate to buy, at par, fifty per cent of all the Land Bank bonds to be issued during the first six months, June 1, to November 30, 1917, with a provision that neither should, prior to 1918, sell any bonds to the public at less than $101\frac{1}{8}$. The syndicate, in this indirect way, obtained from the public a commission of $1\frac{1}{8}$ per cent for selling half of the six months issue of bonds. This was

but an expensive expedient to introduce the bonds on the market.

(b) The Land Banks were unable to sell any bonds directly to farmers having savings to invest, although this was the co-operative basis of the European acts. They were unable to sell them to ordinary investors, as promised by the congressional advocates of the Act. They were unable to sell, even with the assistance of a great American banking syndicate, more than about one-half the amount provided for in the six months syndicate contract. They were wholly unable to sell another bond after November, 1917, when that contract expired. A complete breakdown of the whole scheme was threatened. Thereupon, the ability of the resourceful Secretary of the Treasury again came to the front. The Act was, on January 18, 1918, amended so that he, upon request of the Board, could, out of any unappropriated public money, make *temporary* deposits, not in excess of \$6,000,000, in and for the *temporary* use of the Land Banks. In plain words, money was at that time on hand and had been or could be easily raised from the sale of Liberty bonds. This was the money which could, in this way, be loaned to Land Banks. Any such bank receiving the deposit was required to issue a demand certificate of deposit bearing a rate of interest not exceeding the current rate charged for other government deposits and to secure same by farm loan bonds or other collateral. The Secretary was permitted, during the fiscal years of 1918 and 1919, up to \$100,000,000 per year, to likewise purchase farm loan bonds from Land Banks. Any such bank

could, at any time, repurchase, on the same terms, the bonds so purchased, and should, upon demand, do so as to all such bonds as were held in the treasury when one year elapsed after the end of the war. The original *temporary* organization of any Land Bank was required to be continued so long as any bonds so *temporarily* purchased should be held in the treasury and until the stock subscriptions made by the Farm Associations should equal the amount of stock held by the government (sec. 36, as amended January 18, 1918; 40 Stat. L. 431.)

(c) Pursuant to the amendment, temporary deposits of large sums (Rec. 8) were made, for which two per cent certificates of deposit were issued. Of these there have been repaid (Rec. 8) large amounts. The Land Banks owned on September 30, 1919, \$4,230,805 of United States bonds, and the Joint Stock Banks, \$3,287,503 thereof. The government took stock of the Land Banks aggregating \$8,892,130, and on July 1, 1919, held \$8,265,809 thereof. It purchased \$149,775,000 of Land Bank bonds. Of these, it held on July 1, 1919, \$136,885,000. On September 30, 1919, the total issue of Land Bank bonds aggregated \$285,600,000. Of these, \$135,000,000 were held in the treasury under the amendment of January 18, 1918.

(11) Receivers and liquidation of Land Banks and Farm Associations.

The Board may appoint a receiver of any Land Bank or Farm Association, who, in the course of

liquidation, may sell all its property on such terms as the Board or a court of competent jurisdiction directs. But neither the association nor bank can, without the consent of the Board, go into voluntary liquidation (sec. 29).

(12) Exemption from taxation.

Each Land Bank and Farm Association, including the capital and reserve or surplus thereof and the income derived therefrom, is exempted from federal, state, municipal and local taxation, except taxes upon real estate held, purchased or taken by it. First farm mortgages executed to Land Banks and farm loan bonds issued by them are "instrumentalities of the Government," and as such, they and the income derived therefrom are exempt from all federal, state, municipal and local taxation (sec. 26).

7. ANALYSIS OF THE ACT SO FAR AS IT CONCERNS JOINT STOCK BANKS AND THE CLEAR DISTINCTION WHICH MUST BE MADE BETWEEN THEM AND THE LAND BANKS.

(a) As an evident after-thought, and to enable *large* investors to escape *all* kinds of income taxation, *some* persons, in *some* way, induced well-meaning lawmakers to provide for *other* unrestricted agencies, in addition to the Land Banks, owned and controlled by *outsiders*, to deal only with the *large* investors. These other and unre-

stricted *outside* agencies are federal corporations known as Joint Stock Banks.

(b) They, *without limit in numbers*, can, with nothing but the approval of the Board, be organized by *any* ten or more *natural* persons, regardless of their being borrowers. Neither the government, Farm Association nor Land Bank has any connection therewith, nor any interest therein, nor can either hold any of the stock. The organization is thereby, in each instance, without restrictions, made up of *outsiders* and kept in the hands of those who may happen to be favored by the Board. The sole corporate purposes are to loan, in *unlimited* amounts, on *farm* mortgage security and issue and sell collateral trust farm loan bonds secured thereby. If proper agencies, there was no necessity for Land Banks, and nine-tenths of the Act could have been omitted. Such institution must have, at least, five directors. All stock has a double liability, and the stockholder has the same voting privilege as a stockholder in a national bank. It can do no *general* banking or other business. In plain words, its *sole* business is to make farm loans without *restrictions* and to issue and sell bonds secured thereby. \$250,000 of its capital must be subscribed and one-half paid up. To issue any bonds, all the capital must be paid. It is to have the same powers and be subject to the restrictions and conditions imposed on Land Banks, so far, but not otherwise, as same may be applicable, but practically every feature which led to or could justify the organization of Land Banks is declared to be inapplicable. Thus, interest rates cannot, as in the

case of Land Banks (sec. 17, subd. (b)) be reduced by the Board so as to make any equalization thereof; its loans, as required in the case of those of Land Banks (sec. 12, subds. 1, 4, 6, 7, 10), need not be secured on *farm* lands in the banking district, nor made to a *cultivator* of land, nor the proceeds thereof used for a specific farming purpose, nor the amount of each loan limited to \$10,000, nor the borrower required to agree that if the whole or any portion of the loan be expended for purposes other than those specified, or if there be any other default, the whole amount shall become due. The borrower can not use part of the loan to pay for any stock in a Farm Association. The only substantial limitation is that loans can only be made if secured by *first* mortgage on any *farm* lands within the state in which the Joint Stock Bank is located, or one contiguous state. The interest to be charged cannot exceed by more than one per cent the rate established by the last series of farm loan bonds issued. Under no form or pretense can commissions be charged, nor can there be made any charges not specifically authorized. All bonds shall, however, be in a form prescribed by the Board, have added thereto the words Joint Stock, and by engraving, form and color made distinguishable from Land Bank bonds. Each shall state that the bank issuing it is organized under section 16, is under federal supervision and is operating under the Act.

(c) Such bank can be a depository of public moneys, or may be (sec. 6) employed as a financial agent of the government. This, however, is not the *main* purpose of the agency, but rather a

mere *incident* to the *private* business done. However, no such bank has ever been (Bill, Rec. 10) either such depository or financial agent.

(d) The provisions for the amortization of Land Bank mortgages and for the liquidation and a receivership of those institutions apply to Joint Stock Banks.

(e) All farm loan bonds are lawful investments for fiduciary and trust funds, may be used as security for public deposits, and any bank of the Federal Reserve System may buy or sell same.

(f) All farm mortgages taken and all farm loan bonds issued are "instrumentalities of the Government," and all income therefrom is exempt from all federal, state and municipal taxes.

(g) Large investors have not failed to profit by the organization of these banks. Twenty-seven of them have been organized (Bill, Rec. 9; Appendix, Part 2, *Infra*, p. 91), and up to October 31, 1919, they had paid in \$7,812,050 of capital, issued \$46,255,000 of farm loan bonds of which \$41,000,000 are still outstanding (Bill, Rec. 11; Report 317, Senate Bill No. 3109, Calendar No. 270, 66th Congress, 2nd Session). So un-American are these institutions and so unfair to the public is the withdrawal of large investments from taxation, that the Senate Committee on Currency and Banking has favorably reported (Report 317, Appendix, Part 2, *Infra*, p. 91) a bill (Appendix, Part 3, *Infra*, p. 94) to repeal for the future all tax exemptions of the loan bonds upon the ground "that the tax exemption privilege ought never have been extended," and "the accumulation of large aggre-

gations of capital, wholly exempt from any and all forms of taxation, is wrong in principle and should be discontinued." The committee was of opinion that, "the large taxpayers will gradually absorb these bonds which will contribute nothing to the support of the government."

ASSIGNMENTS OF ERROR.

The assignments of error (Rec. 33) are that the court below erred in:

1. Decreeing a dismissal of the bill.
2. Holding to be valid and constitutional the Farm Loan Act, and also the amendment thereof, approved January 18, 1918.
3. Holding to be valid and constitutional each of the sections 21, 26 and 27 of the Farm Loan Act of July 17, 1916.
4. Holding that defendant can lawfully invest in and purchase Land Bank bonds.
5. Holding that the defendant can lawfully invest in and purchase Joint Stock Bank bonds.

QUESTIONS IN THE CASE.

The questions in the case are:

1. Whether Congress had the power to establish either Land Banks or Joint Stock Banks.
2. Whether Congress had the power to exempt from taxation the mortgages taken or the bonds issued by either of said banks.

APPELLANT'S ARGUMENT.

I.

The substance of the Farm Loan Act, as amended, which was the attempted exercise by Congress of the power now challenged.

This case involves the question of the validity of the Farm Loan Act as amended (8 Fed. Stats. Ann. Supp. 1918, pp. 14-42; 39 Stat. L. 360; 40 Stat. L. 431), and its tax exemption features (secs. 21, 26) as applied to both the Land and Joint Stock Banks.

The substance of the Act is a scheme, the main purpose of which is to create, for borrowers and lenders, *private* corporate borrowing and lending agencies. These agencies were not to (sec. 13) and did not actually (Bill, Rec. 10) do any *general* banking business. They were expressly forbidden so to do. Their energies were *exclusively* confined to lending on *farm* mortgages (1) \$10,000 or less to actual cultivators of the soil, with which to buy or improve the land, and (2) *unlimited* sums to any person for any purpose whatsoever. In its most concrete form, the scheme created and classified the agencies into corporations called Farm Associations, Land Banks and Joint Stock Banks. The *alleged* banks were, however, only such in *name*. They did (Bill, Rec. 10) and could do (sec. 13) no banking business. They

are, however, of such distinct kinds that the separate nature of each must be kept distinctly in mind.

(a) Farm Associations and Land Banks.

Each of any ten or more cultivators and owners of farm lands may mortgage same for not more than \$10,000, but only to buy or improve them. They must, however, *first* form a corporation, known as a Farm Association. This corporation, made up exclusively of borrowers, acts as a broker or commission agent ordinarily does, simply as a borrowers' agency. In so doing, it endorses the paper of each borrower, thus, in a way, putting all borrowers behind each loan. Each borrower subscribes and pays for his stock in a sum equalling five per cent of the loan. This sum is added to the mortgage and made part of the loan. The Farm Association must, however, apply to and obtain the money from a Land Bank, and, as a condition of so doing, must take and pay for exactly the same amount of the bank's stock. The real parties to each loan are the borrower and lender. They are, regardless of the agencies intervening, the only ones interested. One furnishes the money, the other pays it back with interest. In this the *public* has no concern, and no *governmental* function is *essential* to the scheme.

It is true that the first money to be loaned the borrowing farmers was obtained from the government. This, by it subscribing and paying for about \$750,000 of each Land Bank's stock. While it was to so take the stock, it could receive no

dividends thereon. Each transaction was, therefore, practically a government temporary loan, without interest. This kind of a loan by a government relates to a *proprietary*, not a *governmental* interest. As business justifies it, the government Land Bank stock must be taken over with the money paid in by future borrowers in payment of their Farm Association stock subscriptions. The Land Bank, out of the first moneys, thus *temporarily* loaned, acquires farm loans. It then can, and is expected to, raise *new* money for *future* investment by the sale of its own collateral trust bonds secured thereby. This is the extent of its office and it is strictly a matter of *private* concern, if there is a distinction between one which is *private* and *proprietary* and one which is *governmental*.

When the Farm Association has taken up the government's *temporary* loan, held in the form of Land Bank stock, the government's interest, in a scheme supposedly permanent, absolutely ceases. The borrowers then become sole owners of the agencies and step into absolute control thereof. From that time, the government has not even a *proprietary* interest.

(b) Joint Stock Banks.

Abandoning all the reasons for the use of the Land Banks, Congress, as an apparent afterthought conceived the notion of having established Joint Stock Banks. Had these, in the first instance, been provided for, Land Banks would have been unnecessary and nine-tenths of the entire act

could have been dispensed with. The government has not the slightest connection with the Joint Stock Banks, and can never have any interest therein. Individuals, not necessarily borrowers, *only* can organize, own and control same. These *alleged* banks can loan to *any one* on farm lands, in *unlimited* amounts and without any restrictions as to the use made of the land or to be made of the money borrowed thereon. The extent of their calling is to lend on *farm* mortgages and issue and sell their own bonds with the mortgages as collateral trust security. In no sense of the term does (Bill, Rec. 10) or can (sec. 13) the agency engage in banking. So as to somewhat similar organizations it has been very generally (*Infra* Div. V, subd. [d]) and here, several times expressly held (*Selden v. Equitable Trust Co.*, 94 U. S. 419; *Mercantile National Bank v. New York*, 121 U. S. 138; *Jenkins v. Neff*, 186 U. S. 230). Moreover, no one of the alleged banks ever actually did any banking business (Bill, Rec. 10).

(c) Difference between the Land and Joint Stock Banks.

Not only is there a difference between the Land and the Joint Stock Banks as to the ownership and control thereof, but, in the case of the Land Banks, the loans are made to *farm* occupants in *restricted* amounts and for *specific* purposes, while with the Joint Stock Banks there are no restrictions as to amount, persons or purposes. While in this way noncultivating farmers or even speculators can borrow on vacant land and on easy terms,

the large investor really reaps the *greatest* benefit, for he, by a *private* investment of *private* funds, is permitted to go tax-free.

(d) Inducements held out to investors.

To induce investors to *continue* to furnish, after the temporary government loan, the money for the Land Bank business and *start* into that of the Joint Stock Bank, a *huge* price is paid, if tax exemption can be considered a "price," as it actually is. The securities are entirely withdrawn from the domain of the states and arbitrarily made exempt from any kind of taxation, state or federal. This by simply, but falsely, *calling* them "instrumentalities of the Government." This plain method of depriving a state of its revenue, if carried far enough, can destroy the existence of any local government. The discrimination against borrowers, not owning farms, and in favor of *large* investors and *farm owners*, is unfair and really so harsh and arbitrary as to be against the spirit of American institutions.

(e) The scheme was never intended to be governmental.

The entire scheme, as attempted to be justified, is contrary to the views of the American Commission (63d Cong. 2d Sess. Sen. Doc. 261, Part 1, p. 13), which reported:

"It is the opinion of the Commission that our American problem of rural credit should be worked out *without government aid* * * *.

If there is not private capital in sufficient quantities, the only way the government can get the needed capital is either by *taxing all the people* in order to get capital for farming, or else by issuing bonds that sometime later must be *paid by all the people*. * * *

One of the great lessons learned in Europe is that in the long run the farmers succeed best when they help themselves. Whenever they become dependent on the government, they keep looking to the government for more aid. It is believed to be a correct general statement that rural credit is on the strongest basis in those countries, where it has been developed most completely *without government aid*.

Even granting the great importance of agriculture, *it is improper for all the people to be taxed in order to assist the prosperity of even a great class like the farming class*.

Anything in the way of national favors or opportunities for borrowing money on land would be almost certain to encourage speculation in land. This would lead to still higher prices for land and still greater difficulty in getting the land into the hands of owners who till it.

It is sometimes urged that the government should loan money directly to farmers at a very low rate of interest. * * * It is doubtful if it will help the farmers in the long run if they are given special privileges. In other words, the government should help bring about a better system of rural credit by legislation, but not by subsidy."

The United States Commission said in its report (63d Cong. 2d Sess. Sen. Doc. 380, p. 22) to Congress:

"It is our opinion that such aid should not be extended in the United States. * * * The idea of Federal aid is always attractive and commands many able, earnest advocates; *but self-help should be the motto of our new agriculture.* If given the opportunity, under liberal enactment of law, the savings of our nation will gladly invest in this safe field and relieve the Federal Treasury of any necessity to finance the project. It is wise legislation, rather than liberal appropriations or loans which rural credit mostly needs at our hands."

President Wilson, entertaining the same view, in his first annual message (Dec. 2, 1913), said:

"The farmers, of course, ask and should be given *no special privilege, such as extending to them the credit of the government itself.* What they need and should obtain is legislation which will make their own *abundant and substantial credit resources* available as a foundation for joint, concerted local action in their own behalf in getting the capital they must use. It is to this we should now address ourselves."

The then Secretary of the Treasury, Mr. McAdoo, said, in a speech before the Chamber of Commerce at Washington, on Feb. 4, 1915, with respect to a proposition to lend money for another private industry:

"Gentlemen, you ask us to stand for a proposition to *lend money* to private corporations or individuals *upon the security of mortgages.* *Never on the face of the earth.* I

tell you, gentlemen, if you enter upon it, you will have to lend money of the government upon railroads and every other enterprise. Bills are referred to me asking * * * raids upon the United States Treasury in the form of actual loans to be made by the Treasury of the United States on this thing and that thing; *farm loans*, loans upon houses built by working men, etc. *If we go into the money-lending business, we will have to lend it to everybody*; you cannot discriminate under our system of government. Everybody must tap the treasury till if you attempt any such resolution as this."

In 1916, both the Senate Committee on Banking and Currency and the Joint House and Senate Committee on Rural Credits made (64th Cong. 1st Sess. House Doc. 494, p. 6) this report:

"The American farmer does not come to Congress with a hard luck story. He does not ask the government to bestow on him the public money that all the people have contributed for taxes. He does not demand that the government become a banker in order to borrow money on bonds and loan the proceeds to him. * * * He demands legislation that shall put it in the power of those who are interested and those who have money to invest to extend to him the credit he requires."

Upon these recommendations the Farm Loan Act was passed.

(f) The theory upon which is found the power to pass the Act.

By assuming the scheme to be one to do a *general* banking business, which each of such agencies is expressly prohibited (sec. 13) from doing, it is sought to justify its adoption as an exercise of an implied *governmental* power. Regardless of that which may be urged as a reason for sustaining the legislation, the real fact remains that the *main* purpose of these corporate agencies or *alleged* banks is *not* to perform any *governmental* function, as distinguished from ^{one} *which* is strictly *private*. The *main*, *chief* and only *substantial* purpose is to use the system for the *private* or *proprietary* interests of borrowers and lenders. There may, for effect, or as a mere cloak, have been inserted in the Act some apparent minor *governmental* functions. These were, however to be exercised, if at all, only as an *incident* to the *main purpose*. Certain it is that these agencies (Bill, Rec. 10) were not *primarily* established or ever used for any such *incidental* purposes. Therefore, in the light of the *main* purpose of the organization, the power of Congress to establish these agencies must be determined.

II

Unless granted to Congress expressly or by fair implication from some other express power, the power to create Land and Joint Stock Banks must be deemed not to have been in Congress, but reserved to the people of the United States.

(a) The 10th Amendment to the Constitution provides:

"Powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

To this plain provision effect has repeatedly been given and the rule established that the delegation of a power must be *expressly* granted or else be fairly implied from some other power which is actually expressed. The cases go no further than this (*M'Culloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738; *Kansas v. Colorado*, 206 U. S. 46; *First National Bank v. Union Trust Co.*, 244 U. S. 416).

(b) There is no *express* power to adopt the farm loan system. It therefore becomes necessary to find whether there is any power expressly given from which it can fairly be implied. The lawyers who claim that there is such an *implied* power may be divided into two schools: First, those who, as an entirely new and recent discovery, find the implication in the express power "to levy and collect taxes," and second,

those who in general loose thought, assume that *all* banks exercise *governmental* functions, to which any that are *private* and *proprietary* are mere incidents. They, so assuming, find in the express power to establish the government itself, room for an implication of the power to establish such banks as governmental agencies and therefore parts of the government. These two views, resting on entirely different grounds, demand separate consideration. Attention will therefore be first directed to the newly discovered question whether from the express power "to levy and collect taxes," there can be fairly implied the power to establish the farm loan system, a startling proposition for the support of which no authority is or can be cited, but against which *Kansas v. Colorado*, 206 U. S. 46, would seem to be conclusive.

III

Such express power not having been given, none can be fairly implied (Art. I, Sec. 8) from the power "to levy and collect taxes."

To find an *implied* power, some *express* power must be pointed out from which the *implication* flows as an incident. Such *express* provision is claimed to be contained in the constitutional declaration (Art. I, sec. 8, clause 1) that "Congress shall have power to levy and collect taxes * * * and provide for the common defense and general welfare of the United States." *Express* power is here clearly given to levy and col-

lect taxes. This implies the power to spend the money, at least, for a proper purpose, and one for which the collection was made. Congress has, then, *some* power to appropriate money. Having the power to so appropriate, it is plausibly suggested that an appropriation can be made for the support or encouragement of "the general welfare," and as Congress can, in some respects, legislate concerning agriculture, it has the *implied* power to appropriate money therefor. From this it has been suggested that the Act might be sustained by treating it as an appropriation of money for the public welfare. This reasoning is entirely too far fetched and refined to follow and has never been in actual experience applied. Moreover, it is in the teeth of and contrary to the principles settled by *Kansas v. Colorado*, 206 U. S. 46, 87, 88, 90, 91. There it was decided that there could not, from the general welfare clause, or any other provision of the Constitution, be implied any power in Congress to reclaim arid land. No mere extract could do full justice to the opinion of Mr. Justice Brewer in that case. After declaring that the United States was a government of delegated powers, he, among other things, said:

"As heretofore stated, the constant declaration of this court from the beginning is that this government is one of enumerated powers. * * * Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, it is enough to say that no one of them by any implication refers to the reclamation of arid lands. * * * But the proposition

that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the Tenth Amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, *disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.* With equal determination the framers intended that no such assumption should ever find justification in the organic Act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that Act. * * * The argument of counsel ignores the principal factor in this article, to-wit, 'the people.' Its principal purpose was not the distribution of power between the United States and the states, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it, 'we the people of the United States,' not the people of one state, but the people of all the states, and Article X reserves to the people of all the states the powers not delegated to the United States. The powers affecting the internal affairs of the states not granted to the

United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, and all powers of a national character which are not delegated to the national government by the Constitution are reserved to the people of the United States. The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated. This Article X is not to be shorn of its meaning by any narrow or technical construction, but is to be considered fairly and liberally, so as to give effect to its scope and meaning. * * * This very matter of the reclamation of arid lands illustrates this: At the time of the adoption of the Constitution within the known and conceded limits of the United States there were no large tracts of arid land, and nothing which called for any further action than that which might be taken by the legislature of the state, in which any particular tract of such land was to be found, and the Constitution, therefore, makes no provision for a national control of the arid regions or their reclamation. But, as our national territory has been enlarged, we have within our borders extensive tracts of arid lands which ought to be reclaimed, and it may well be that no power is adequate for their reclamation other than that of the national government. But if no such power has been granted, none can be exercised."

The proposition could be here well rested. If, however, substantial reasoning in its support could be applied or clearly and logically followed, the entire controversy would be narrowed to the two inquiries whether (a) the Act is an appropriation of money, and (b) if so, whether the means adopted were, as they must be (*M'Culloch v. Maryland*, 4 Wheat. 316, 421; *Kansas v. Colorado*, 206 U. S. 46, 88; *First National Bank v. Union Trust Co.*, 244 U. S., 416), appropriate to the end in view.

(a) A casual reading demonstrates that the Act is not, and was never intended to be, an appropriation of money. Only *incidental* is the public money used, and then only *temporarily* and as a means of accomplishing the real object of the legislation. In no sense is the use of public money essential, nor is it in any degree the object to be attained. The only appropriation is for the purpose of carrying into effect an act which there is supposedly power to pass. Paragraph 5 of section 5 provides that if, within thirty days after the opening of subscription books, any part of the minimum capitalization of the Land Banks remains unsubscribed, the Secretary of the Treasury shall, on behalf of the government, subscribe for the balance. Section 32, as amended, permits \$6,000,000 of public money to be deposited in the Land Banks for their *temporary* use. Section 33 appropriates \$100,000 to carry the act into effect. These are the only references to public money, and afford the occasions on which an appropriation, if made, could be used. Unquestionably the *sole* purpose of the Act is to establish a system of *farm*

lending. The title, misleading as it is, shows that it is not an appropriation act, but was by its framers only conceived to be one "to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States and for other purposes." These words suggest no thought of an appropriation. Complete machinery was provided for accomplishing the ends in view. It was, in the first instance, contemplated that it should all be done without the use of a dollar of public money, except the necessary expenses of organization, and even they were to be repaid. Land Banks, Joint Stock Banks and Farm Associations were to be formed without financial assistance from the government, and, with the exception of Land Banks, must be formed without its assistance. In this excepted case, it was provided that *if* the necessary stock subscriptions did not come from private sources, the government should subscribe the minimum balance, to be *repaid*, without interest or dividends, as rapidly as additional stock could be placed. The legislation is perfect and complete in all its parts without an appropriation. The latter, even if it could be implied, is simply an *incident* designed to make the Act effective if other means should *temporarily* fail. The Act can no more be justified as an appropriation of public money than could one incorporating a national insurance or other *private* company, to which was attached a section providing that the government should subscribe for any stock

not subscribed by individuals. That which the Act does is to provide *private* capital for *private* investment on *private* farm land security, the standardizing of *farm* mortgage investments and the equalizing of rates of interest on farm loans. Some public money *may* temporarily be used to put the Act into operation. The immediate purpose and intent, however, was that all the organizations should function absolutely *without public money*, and every provision was expressly and adequately framed to accomplish that end. The plain truth is that the system created is one for conducting a *farm* loan business by *national* corporations under *national* control and regulations, free from *state* interference and from *any kind of taxation*, state or federal. It would seem to be pure subterfuge to call the Act an appropriation of public money.

(b) Considered, however, as an appropriation measure, the means adopted are neither necessary nor proper to the end in view. Congress may, of course, adopt any *proper* means to accomplish a legitimate end. It can do no more (*M'Culloch v. Maryland*, 4 Wheat. 316, 421; *Kansas v. Colorado*, 206 U. S. 46, 88; *First National Bank v. Union Trust Co.*, 244 U. S. 416). The end to be accomplished by this legislation was not the development of agriculture or the stabilization of *farm* credits. No power to develop agriculture or stabilize farm credits can be found anywhere in the Constitution. It cannot be implied any more than could (*Kansas v. Colorado*, 206 U. S. 46) be the power to reclaim arid lands. The legitimate, and only legitimate, end of the legislation is the spending of public money for the *private* business and *private* ends of

a *particular class* of people. This is the end which must, if it can, justify the means. The apparent strength of any argument in favor of the implied power to pass the Act must be based upon a fundamentally erroneous deduction. It must be claimed, first, that the development of agriculture is within the general welfare clause; second, that it is, therefore, a legitimate object of congressional appropriation; third, that being a legitimate object, Congress may adopt any proper means to further it, and, fourth, that the means under consideration are proper. This is a complete *non sequitur*. It might be said that, being a legitimate object of *congressional appropriation*, any means proper to *carry into effect such appropriation*, if made, may be adopted. If any such argument were made, the conclusion would be untenable, for the means provided by the Act are not proper to the end in view. If Congress lawfully appropriated \$9,000,000 for the purpose of making loans to farmers, it might have been proper to create boards and corporations to handle such *public* funds and make such loans under suitable provisions. Provision might possibly have been made for the continuous use of the money so appropriated by relending it when the original loans should be paid off. No such provisions were, however, made. On the contrary, Congress provided for the organization of *private* corporations whose capital is to be subscribed in the first instance by *private* individuals and later by other private individuals organized into Farm Associations. It provided for these *private* corporations raising additional funds by the sale to *private* individuals of bonds to be paid

for by *private funds*. It provided expressly and necessarily that even such public money as might temporarily be used to put the system on its feet should be promptly and regularly paid to the government *as fast as any business was done*. The machinery is especially arranged *not* to get public money *in*, but to keep *public* money *out* and to eliminate expeditiously any *public* money that may get in. No loan can be made by the Land Banks without a *private* subscription to its stock which leads directly to the retirement of government stock. The scheme cannot succeed without the speedy disappearance of all *public* money therefrom. It was the evident purpose that no *public* money should be used, unless absolutely necessary, but that if any such were necessary, it should be as little in amount and for as short a time as possible. The means were admirably adapted to accomplish *that* purpose. This, even more plainly, appears in the case of the Joint Stock Banks. These institutions, *privately* financed, owned and controlled, never handle a penny of government money, even *temporarily*. They might, perhaps, be a proper part of a scheme of farm credits, but they are and can be no part of any machinery for expending public money. Their real purpose is to afford the opportunity for large investors to escape the payment of just taxes, a thing for which they are always looking.

These contentions are not technical. They go to the very root of the matter. No one can read the Act without being convinced, beyond a doubt, that the appropriation was a means to carry into effect the legislation and not the legislation a

means to carry into effect the appropriation. Unless Congress can legalize, as it cannot (*Kansas v. Colorado*, 206 U. S. 46, 88, 89) any act thought by it to be beneficial by appending an appropriation to carry it into effect, then the power here attacked cannot be *implied* from the right to appropriate money. If the Congress can so act, then it can organize corporations to manufacture farming implements or to build workingmen's cottages or lawyers' homes or to reclaim arid lands or to furnish water to cities, provided only that an appropriation of public money is also involved. Doubtless such organizations would always succeed in spending the money, but that fact alone would not justify them as a proper means for the execution of the powers of Congress. The real question is: Can an appropriation, even if made, be used as a mere *pretense* to cover the exercise of an unauthorized power? The present is a striking example of the attempt. Though the *public* money now invested will shortly be returned to the government, the pretended means for spending can go on forever, functioning a complete system for doing, in the various states, a *private* farm loan business. Dealing wholly in *private* capital, with not a cent of *public* money invested (or to be invested) the banks will remain forever justified, if at all, by the thought that they *once* assisted in spending some *public* money *conditionally* appropriated for *temporary* use in *establishing the very banks in question*.

Congress has no power to create a corporation for the purpose of handling an appropriation whose term of existence is not limited to the dura-

tion of the appropriation, but whose essential functions do not come into full play until after the repayment of the public money and continue thereafter indefinitely. Congress can designate any person or corporation a depository of public money and can make any person or corporation a fiscal agent. These provisions, *incidental* to the *main* purpose, can not alone justify the entire scheme. They are mere *incidents* to a *private* business in a *private* interest. If they justify the scheme, then Congress can create corporations to exercise powers of the widest latitude in any kind of business simply by designating them as depositaries or fiscal agents, though, as here, they were never intended to and never did act as such. These mere designations do not make the corporations appropriate for the end in view, if otherwise they would be appropriate.

IV.

The express power to establish a government implies the power to establish banks, only if their main purpose is to perform governmental functions.

There remains to be considered the view entertained by that second group or school of lawyers, who loosely and erroneously assume, that all banks exercise *governmental* functions, to which any *private* function is a mere incident. They find, from the express power to establish the government itself, room for an implication of the power to establish, as a part thereof, all gov-

ernmental agencies. They necessarily, in this instance, base this view upon their loose and erroneous assumption. Unless the agencies are *governmental*, the reason for the rule invoked ceases, and when the reason ceases, the rule of law based thereon loses its force.

(1) Reasoning upon which the proposition rests and its inapplicability here.

(a) This view rests upon the thought that, although the 10th Amendment reserved to the states all the powers not granted to the United States, yet since general banking was a *governmental* function, as distinguished from that which was *private*, Congress had, as was decided in *M'Culloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738, 792, and *Farmers' & Mechanics' National Bank v. Dearing*, 91 U. S. 29, known as the National Bank Cases, the implied power to establish such banks, even though coupled therewith and as an *incident* thereto, *private* functions were also to be exercised. The evident reason why all great lawyers do not rely upon so simple a proposition, is the difficulty in assuming here that the Act ever created *banks*, the *main* purpose of which was to perform *governmental* functions. With the premise gone, the proposition must fall.

(b) All the powers of a state or the United States are either governmental or else private and proprietary. These two classes of powers are well defined, quite distinct and fully recognized (*South Carolina v. United States*, 199 U. S. 437, 461, 462; *First National Bank v.*

Union Trust Co., 244 U. S. 416; *Illinois Trust & Savings Bank v. Arkansas City*, 76 Fed. Rep. 271, 282, 22 C. C. A. 171). In the South Carolina case (199 U. S. 437, 461, 463), Mr. Justice Brewer reviewed the decisions and concluded as to such powers there was a marked distinction between "those which are of a strictly governmental character," and "those which are used * * * in the carrying on of an ordinary private business." He then concluded:

"Now, if it be well established, as these authorities say, that there is a clear distinction as respects responsibility for negligence between the powers granted to a corporation for governmental purposes and those in aid of private business, a like distinction may be recognized when we are asked to limit the full power of imposing excises granted to the national government by an implied inability to impede or embarrass a state in the discharge of its functions. It is reasonable to hold that, while the former may do nothing by taxation in any form to prevent the full discharge by the latter of its governmental functions, yet, whenever a state engages in a business which is of a private nature, that business is not withdrawn from the taxing power of the nation."

The learned justice adopted, as applicable to the government, the distinction as to the governmental and private powers of a city. Of these, in the Arkansas City case (76 Fed. Rep. 271, 282, 22 C. C. A. 171), Judge Sanborn said:

"A city has two classes of powers—the one legislative, public, governmental, in the exercise of which it is a sovereignty and governs its people; the other proprietary, *quasi* private, conferred upon it, not for the purpose of governing its people, but for the private advantage of the inhabitants of the city and of the city itself as a legal personality. In the exercise of the powers of the former class it is governed by the rule here invoked. In their exercise it is ruling its people and is bound to transmit its powers of government to its successive sets of officers unimpaired. But in the exercise of the powers of the latter class it is controlled by no such rule, because it is acting and contracting for the private benefit of itself and its inhabitants, and it may exercise the business powers conferred upon it in the same way, and in their exercise it is to be governed by the same rules that govern a private individual or corporation. Dill. Mun. Corp. (3d Ed.) Sec. 66, and cases cited in the note; *Safety Insulated Wire & Cable Co. v. City of Baltimore*, 13 C. C. A. 375, 377, 378, 66 Fed. 140, 143, 144; *San Francisco Gas Co. v. City of San Francisco*, 9 Cal. 453, 468, 469; *Com. v. City of Philadelphia*, 132 Pa. St. 288, 19 Atl. 136; *New Orleans Gaslight Co. v. City of New Orleans*, 42 La. Ann. 188, 192, 7 South. 559, 560; *Tacoma Hotel Co. v. Tacoma Light & Water Co.*, 3 Wash. St. 316, 325, 28 Pac. 516, 519; *Wagner v. City of Rock Island*, 146 Ill. 139, 154, 155, 34 N. E. 545, 548, 549; *City of Vincennes v. Citizens' Gaslight Co.*, 132 Ind. 114, 126, 31 N. E. 573, 577; *City of Indianapolis v. Indianapolis Gaslight & Coke Co.*, 66 Ind. 396, 403; *Read v. Atlantic City*, 49 N. J. Law, 558, 562, 9 Atl. 759. In contracting for waterworks to supply itself and

its inhabitants with water, the city is not exercising its governmental or legislative powers, but its business of proprietary powers. The purpose of such a contract is not to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens. 1 Dill. Mun. Corp., Sec. 27; *City of Cincinnati v. Cameron*, 33 Ohio St., 336, 367; *Safety Insulated Wire & Cable Co. v. City of Baltimore*, *supra* and cases cited under it."

In *Bank of United States v. Planters Bank*, 9 Wheat. 904, 907, 908, Mr. Chief Justice Marshall outlined the same view by saying:

"* * * when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. * * * As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating Act.

The Government of the Union held shares in the Old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. * * * The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corpora-

tion, and exercises no power or privilege which is not derived from the charter."

It is, therefore, manifest that the Act, as an exercise of an implied power, cannot stand if the agencies organized to carry it out, whatever called, did not, in the *main*, exercise *governmental* functions, and not those strictly of a *private* character. There cannot be ignored the difference between and "the scope and character of * * * *governmental* and *private* powers." The latter cannot be treated as a wholly immaterial consideration. So all thinkers are taught by the doctrine of *South Carolina v. United States*, 199 U. S. 437, and *First National Bank v. Union Bank & Trust Co.*, 244 U. S. 416. Congress could not, as it attempted, provide for a farm loan system by giving the *name* of banks to simple loan agencies, and calling them, regardless of their actual character, "instrumentalities of government." Otherwise, form could override substance.

V.

No implied power existed to pass the Act because the main function of the agencies appointed was to deal with and for private and proprietary interests.

(a) The question.

Here arises the trouble in the case, for if the *agencies* established were not, in fact, *general* banks, or, regardless of what they were, if their *main* purpose was *not* to exercise *governmental*

functions, to which *private* business was a mere incident, the premise on which the proposition rests wholly fails. *South Carolina v. United States*, 199 U. S. 437, and *First National Bank v. Union Trust Company*, 244 U. S. 416, when properly applied, are conclusive authorities in support of this view.

(b) The fact that the agencies provided were actually named banks, does not prevent an inquiry into the unquestionable fact that they were not in reality such.

This because mere words or forms cannot be used to evade a plain constitutional mandate. The calling of a corporation a bank, when, in fact, it is not such, cannot justify the exercise of a power forbidden by the constitution. This is what Mr. Justice Harlan had in mind when he, in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 27, said:

"This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things. Such is an established rule of constitutional construction, as the adjudged cases abundantly show. * * * In *Mugler v. Kansas*, 123 U. S. 623, it was said the courts, when determining whether a statute is consistent with the fundamental law, must not deem themselves 'bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority.'"

In the same case, Mr. Justice Holmes said (l. c. 55):

"I hardly can suppose that the provision is made any the worse by giving a bad reason for it or by calling it by a bad name. I quite agree that we must look through form to substance."

Here the agencies provided for, though so-called, were not banks at all. The *main* purpose thereof was to do business of a *private* and *proprietary* character. The *governmental* functions, if any, were only *incidental* to that *main* purpose.

(c) The National Bank Cases teach no different doctrine.

The claim of an implied power must, therefore, to find any support in the early National Bank Cases, rest on the fact that the Act really established *general* banks, as it does not, the *main* functions of which were *governmental*, and the *private* business to be done was only an *incident* thereto. If the main functions of the agencies established were simply to perform *private* and *proprietary* acts, as distinguished from those which were *governmental*, and the latter were merely *incidental* to the others, then no implied power existed.

That the National Bank Cases rested upon the sole theory stated is plain. Banks, the power to establish which is implied, within the meaning of the rule of these cases, must be *real* banks which perform real and substantial *governmental* functions. This must be, not a mere incident to, but

the *main* object of their existence. The exercise of *private* powers must come solely as an incident (*First National Bank v. Union Trust Co.*, 244 U. S. 416) to the *main* purpose. As it is with other *incidents* to interstate commerce, there must be "a real or substantial connection with" the *main* public function (*Second Employers' Liability Cases*, 223 U. S. 1).

If the National Bank Cases so rest, then they clearly do not constitute authority for the proposition that there was any implied power to pass the Act, unless its *main* purpose was to provide agencies to perform functions which were *governmental*. This is apparent from the slightest review of the opinions therein.

Thus, in *M'Culloch v. Maryland*, 4 Wheat. 316, it was said:

"A bank, to the Government, 'is a convenient, a useful and *essential* instrument in the prosecution of *its* fiscal operations.'"

In *Osborn v. Bank*, 9 Wheat. 738, 860, 861, 863:

"The bank is not considered as a private corporation, whose *principal* object is individual trade, and individual profit, but as a *public* corporation, created for *public* and *national* purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government, is admitted; but the bank is not such an individual or company. It was not created for its *own* sake, or for *private* purposes. *It has never been supposed that Con-*

*gress could create such a corporation. * * **
 Why is it that Congress can incorporate or create a bank? * * * It is an instrument which is 'necessary and proper' for carrying on the *fiscal operations of government*. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money which is conferred by its charter? If it can, if it be as competent to the purposes of government without as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then this faculty is *necessary to the legitimate operations of government*, and was constitutionally and rightfully engrafted on the institution. * * * The operations of the bank are believed not only to yield the compensation for its services to the government, but to be *essential to the performance of those services*. Those operations give its value to the currency in which all the transactions of the government are conducted. They are therefore inseparably connected with those transactions. They enable the bank to render those services to the nation for which it was created, and are therefore of the very essence of its character, as national instruments. The business of the bank constitutes its capacity to perform its functions *as a machine for the money transactions of the government*. Its corporate character is merely an *incident* which enables it to transact that business more beneficially."

In *Farmers' & Mechanics' Bank v. Dearing*, 91 U. S. 29:

"The national banks organized under the act are instruments designed to be used *to aid the government* in the administration of an important branch of the *public service*."

(d) The banks which come within the rule of the National Bank Cases are well known and clearly defined instrumentalities.

Banks are not unknown things. They are capable of being and have frequently been defined. The very definition, so far as concerns the exercise of a *governmental* function, is well understood. They are not such agencies as the act contemplates and creates.

In 3 Encyclopedia of United States Supreme Court Reports, pp. 5-7, the cases from this court are gathered and from them it is concluded:

"A bank is a *quasi-public* institution. Banks, in the commercial sense, are of three kinds, to-wit: 1, Of deposit; 2, of discount; 3, of circulation. All or any two of these functions may, and frequently are, exercised by the same association, but there are still banks of deposit, without authority to make discounts or issue a circulating medium. * * * A banker is one who has a place of business where deposits are received and paid out on checks, and where money is loaned upon security. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans,

and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations."

In footnote 2, page 6, it is said:

"Strictly speaking, the term bank implies a place for the deposit of money, as that is the most obvious purpose of such an institution. Originally, the business of banking consisted only in receiving deposits, such as bullion, plate and the like, for safekeeping until the depositor should see fit to draw it out for use, but the business, in the progress of events, was extended, and bankers assumed to discount bills and notes and to loan money upon mortgage, pawn or other security, and at a still later period to issue notes of their own intended as a circulating currency and a medium of exchange instead of gold and silver."

These definitions are fully sustained by the cases (*Bank for Savings v. Collector*, 3 Wall. 495, 512; *Oulton v. Savings Institution*, 17 Wall. 109; *Warren v. Shook*, 91 U. S. 704; *Selden v. Equitable Trust Co.*, 94 U. S. 419; *Knickerbocker Life Ins. Co. v. Pendleton*, 115 U. S. 344; *Mercantile National Bank v. New York*, 121 U. S. 138, 156; *Guthrie v. Harkness*, 199 U. S. 148, 157). So, whenever there is any kind of congressional power to establish banks, the plain meaning is that those established must be institutions, the *main* purpose of which is to exercise *governmental* functions.

(e) Agencies like Land and Joint Stock Banks are, therefore, not banks within the meaning of the principle.

Coming still closer to this case, it may be said that agencies like Land and Joint Stock Banks, prohibited from doing a banking business, are not banks, the *main* purpose of which is to exercise *governmental* functions, for, as has been (*State v. Reid*, 125 Mo. 43, 52) well said, "the mere fact that a corporation is authorized to exercise *some* of the functions of a bank does not, in law and in fact, create it a bank within the meaning of * * * law."

In 3 Encyclopedia of the United States Supreme Court Reports, pp. 5-7, it is stated:

"And trust companies are not banks in the commercial sense of the word * * *. The business of the stock broker is ordinarily distinct from the business of a banker, or according to the common understanding, is not a banker."

In *Selden v. Equitable Trust Co.*, 94 U. S. 419, 423, a corporation which, exactly as the Land and Joint Stock Banks do, loaned its own money on notes secured by mortgages and sold these securities with its guaranty, using the proceeds to make other loans, was held not to be a "bank," Mr. Justice Strong pointedly saying:

"The Equitable Trust Company lent its own money, taking bonds and mortgages therefor. Those bonds it sold with a guaranty. It sold only its own property, not that re-

ceived from other owners for sale. Such a business, in our opinion, did not constitute the corporation a banker, as defined by the revenue laws."

In *Mercantile National Bank v. New York*, 121 U. S. 138, 159, Mr. Justice Matthews aptly put it:

"Trust companies * * * are not, in any proper sense of the word, banking institutions, * * * are not banks in the commercial sense of that word and do not perform the functions of banks in carrying on the exchanges of commerce."

This doctrine was restated and applied in *Jenkins v. Neff*, 186 U. S. 230. In *Wells Fargo & Co. v. Railroad*, 23 Fed. 469, an express company did far more of the ordinary business done by a bank than can be done by a Land or Joint Stock Bank, yet it was, upon unanswerable reasoning, held not to be a bank. So, in a somewhat similar case, it was said as to a savings association (*State v. Louisiana Savings Co.*, 12 La. Ann. 568). Substantially, the same rulings (*Loan & Trust Co. v. Helmer*, 77 N. Y. 64; *Pratt v. Short*, 79 N. Y. 437; *People v. Railroad*, 12 Mich. 390; *State v. Granville Alexandrian Society*, 11 Ohio 1; *State v. Stebbins*, 1 Stewart (Ala.) 299; *State v. Reid*, 125 Mo. 43; *State ex inf. v. Lincoln Trust Co.*, 144 Mo. 562), have been applied to many other like corporations. Probably the best detailed and most extended review of the cases is found in *State v. Reid*, 125 Mo. 43, a careful reading of which will probably satisfy any inquiring mind

that neither a Land nor a Joint Stock Bank is, in any sense, a bank, the *main* purpose of which is to perform some *governmental* function, and to which any *private* power exercised is a mere *incident* (*Osborn v. Bank*, 9 Wheat. 738; *First National Bank v. Union Trust Co.*, 244 U. S. 416). Such an agency has not "any real or substantial connection" (*Second Employers' Liability Cases*, 223 U. S. 1) with the exercise of any *governmental* function. Instead of the *private* powers being an *incident* to those which are *governmental*, the few minor governmental powers are unreal, unsubstantial and merely *incidental* to the exercise of those which are strictly *private* and *proprietary*.

VI.

The designation of the banks or agencies as government depositaries and financial agents is not the main purpose of the scheme, but, at most, was a mere incident thereto.

(a) Section 6 of the act provides:

"That all Federal Land Banks and Joint Stock Land Banks organized under this act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. And the Secretary of the

Treasury shall require of the Federal Land Banks and Joint Stock Land Banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

This section permits the banks to be designated as depositaries of public money and their employment as financial agents of the government. They must, in such capacities, perform only such reasonable duties as may be required of them. They must, by the deposit of United States bonds, or otherwise, give security for the faithful performance of their duties. All government funds in any such depositary or financial agency must be kept separate and apart from any other funds and cannot be invested in farm mortgages or bonds.

(b) It is wholly immaterial that some artful mind may have suggested the insertion of this section to give to the scheme a mere color that *governmental* functions were to be performed. It is sufficient to say they were not the main purpose of the scheme. If anything, they were mere *incidents* to the *main* purpose. That main purpose was to obtain from *private* persons *private* money to loan for the *private* use of one class and the *private* gain of another.

(c) This view accords with the practical workings of the Act. The bill (Rec. 10) avers that

none of the *alleged banks*, Land or Joint Stock, has ever engaged in the banking business. It also avers that neither has been made a government depositary or financial agent, nor ever accepted any government deposits, except that during the summer of 1918, the Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the government for the *sole* purpose of making seed grain loans to drought-stricken farmers. The President, at the request of the Secretary of Agriculture, set aside, out of his \$100,000,000 of *war* funds \$5,000,000 for that purpose. These three banks made upwards of fifteen thousand seed loans, aggregating \$4,500,000, all secured by crop liens. In making these loans, the three banks acted without compensation. This, under a joint circular of the Treasury and Agricultural Departments, which allowed actual expenses but no more (Bill, Rec. 10).

VII.

Exemption from Taxation.

(a) Under section 21, each Land Bank farm bond must recite "that it is not taxable by national, state or municipal authority." Section 26 specifically exempts Land Banks and Farm Associations from practically *all* taxation. It also exempts *all* Land Bank and Joint Stock Bank *farm* loan mortgages and bonds, and the income therefrom, declaring them to be "instrumentalities of the government." The validity of these provisions is separately challenged.

(b) If, of course, the act is unconstitutional as to either class of banks, no tax exemption can, as to that bank, be upheld, because as Mr. Justice Field in *Norton v. Shelby County*, 118 U. S. 425, said:

"* * * an unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is in legal contemplation as inoperative as though it has never been passed."

(c) While *real* governmental instrumentalities are exempt or can be exempted from state taxation (Willoughby on Constitution, sec. 45, *et seq.*), the exemption should never be lightly extended (*Thomson v. Union Pacific R. Co.*, 9 Wall. 579). This because Congress cannot call something such an instrumentality and by such a simple method relieve it from state taxation. Otherwise, little by little, encroachments could be made until there was nothing left for a state to tax, and the state itself would fall for lack of revenue to support it. There must, therefore, be an *actual* governmental instrumentality before, without more, it is or can by Congress be made exempt from any state tax. So, whatsoever Congress may do as to exempting property from a tax levied under its own authority, it cannot grant an exemption from a state tax unless the latter be levied upon that which is really an instrumentality of the government.

(d) Whether such loans or bonds are or can be made *governmental* instrumentalities, depends upon whether the *main* purpose of the agency is-

suings them is to exercise a *governmental* function, or one that pertains to *private* or *proprietary* interests. So it has been distinctly held (*First National Bank v. Union Trust Co.*, 244 U. S. 416; *South Carolina v. United States*, 199 U. S. 437). Hence, in the end, this may be concluded: If the *main* purpose of either agency is to exercise a governmental function, to which the exercise of *private* powers is a mere incident, a federal tax exemption exists as to that particular agency. It is otherwise, if the *main* purpose is to exercise a *private* function, to which the *governmental* powers are mere *incidents*.

VIII.

Even if the Act and its tax exemption feature can be upheld as to the Land Banks, they cannot be sustained as to the Joint Stock Banks.

(a) As an evident after-thought and to enable *large* investors to escape *all* kinds of income taxation, *some* persons by *some* inconceivable method, convinced Congress that it should, as it did (sec. 16), provide for *other* unrestricted *moneymaking* agencies, in *addition* to the Land Banks, owned and controlled by *outsiders*, to deal only with the *large* investors.

These other and unrestricted *outside* agencies are federal corporations known as Joint Stock Banks.

(b) They, *without limit in numbers*, can, with nothing but the approval of the Board, be organ-

ized by *any* ten or more *natural* persons, regardless of their being borrowers. Neither the government, Farm Association nor Land Bank has any connection therewith nor any interest therein, nor can either hold any of their stock. The organization is thereby in each instance, without restrictions, made up of *outsiders* and kept in the hands of those who happen to be *avored* by the Board. The sole corporate purposes are to loan, in *unlimited* amounts, on *farm* mortgage security and issue collateral trust farm loan bonds secured thereby. Such an institution must have, at least, five directors. All stock has a double liability, and the stockholder has the same voting privilege as a stockholder in a national bank. It can do no *general* banking or other business and *h* (Bill, Rec. 10) never done any. Its *sole* business is to loan on *farm* mortgages and issue and sell bonds secured thereby. \$250,000 of its capital must be subscribed and one-half thereof paid up. To issue any bonds, all the capital must be paid. It has the same powers and is subject to the restrictions and conditions imposed on Land Banks, so far, but not otherwise, as same may be applicable, but practically every feature which led to or could justify the organization of Land Banks is declared to be inapplicable. Thus, interest rates cannot, as in the case of Land Banks (sec. 17, subd. [b]) be reduced by the Board so as to make any equalization thereof; its loans, as required in the case of those of Land Banks (sec. 12, subds. 1, 4, 6, 7, 10), need not be secured on *farm* lands in the banking district, nor made to *cultivators* of land, nor the proceeds

thereof used to buy or improve the farms, nor the amount of each loan limited to \$10,000, nor the borrowers required to agree that if the whole or any portion of the loan be expended for purposes other than those specified, or if there be any other default, the whole amount shall become due. The borrowers can not, as in the case of the Land Banks, use part of the loan to pay for any stock in a Farm Association. The only substantial limitation is that the loans shall be made if secured by *first* mortgage on *farm* lands within the state in which the Joint Stock Bank is located or one contiguous. Presumably, as a source of *private* profit to this outside agency, the interest charged on a mortgage loan can exceed by one per cent the rate established by the last series of farm loan bonds issued. All bonds, while in a form prescribed by the Board, must have added thereto the words, Joint Stock, and by engraving, form and color be made distinguishable from Land Bank bonds. Hence, a decision herein that a Joint Stock bond was invalid, would not, of itself, affect one issued by a Land Bank.

(c) Such agency, like a Land Bank, can be a depositary of public moneys, or may be (sec. 6) employed as a financial agent of the government. This, however, is not the *main* purpose of the Act, but rather a mere *incident* to the *private* business done for the *private* interest. However, it has never acted as a bank, received current deposits or in any wise acted either as a government depositary or financial agent (Bill, Rec. 10).

(d) The provisions for the amortization of Land Bank mortgages and for the liquidation and

a receivership of those institutions apply to Joint Stock Banks.

(e) As if Congress had not done enough for the outsiders' profit-making machine and the large investors' tax exemption haven, all Joint Stock farm loan bonds are made lawful investments for fiduciary and trust funds, they are permitted to be used as security for public deposits and may be bought and sold by any bank of the Federal Reserve System.

(f) All farm mortgages taken and all farm loan bonds issued are in *name* declared to be "instrumentalities of the Government," and all income therefrom actually exempted from all federal, state and municipal taxes.

(g) Large investors have not failed to profit by the organization of these banks. Twenty-seven of them have been organized (Bill, Rec. 9), and up to October 31, 1919, they had paid in \$7,812,050 of capital, issued \$46,255,000 of farm loan bonds of which \$41,000,000 are still outstanding (Bill, Rec. 11; Report 317, Senate Bill No. 3109, Calendar No. 270, 66th Congress, 2nd Session). So un-American are these institutions and so unfair to the public is the withdrawal by *large* investors of *large* investments from taxation that the Senate Committee on Currency and Banking has favorably reported (Report 317, Appendix, Part 2; *Infra*, p. 94) a bill (Appendix, Part 3; *Infra*, p. 94) to repeal, *for the future*, all tax exemptions of the loan bonds because "the tax exemption privilege ought never to have been extended," and "the accumulation of large aggregations of capital, wholly exempt from any and

all forms of taxation, is wrong in principle and should be discontinued." The committee was of the clear opinion that "the *large* taxpayers will gradually absorb these bonds, which will contribute *nothing* to the support of the government."

In a very recent strong article in his own magazine (41 Farm & Home, No. 849, p. 6, January, 1920) headed "A National Scandal," Herbert Myrick, the reputed "Father of the Federal Farm Loan Act," concluded:

"The weak spot can be found, even in the best of things. The federal farm loan system is no exception. The nigger in the wood pile stands revealed. *It is in the section which authorizes Joint Stock Land Banks.* * * * 'Why, the thing is a national scandal,' truly remarked Senator Knute Nelson of Minnesota in a recent conversation. The Senator spoke wisely."

(h) Abandoning all the reasons for the use of the Land Banks. Congress, as an apparent afterthought, conceived the notion of having established Joint Stock Banks. Had these, in the first instance, been provided for, Land Banks would have been unnecessary, and nine-tenths of the entire Act could have been dispensed with. The government has not the slightest connection with the Joint Stock Banks, and can never have any interest therein. Individuals, not necessarily borrowers, *only* can organize, own and control same. These *alleged* banks can loan to *any one* on farm lands, in *unlimited* amounts and without *any* restrictions as to the use made of the land or to be made of

the money borrowed thereon. The extent of their calling is to loan on *farm* mortgages and issue and sell their own bonds with the mortgages as security.

Not only is there a difference between the Land and the Joint Stock Banks as to the ownership and control thereof, but, in the case of the Land Banks, the loans are made to *farm* occupants in *restricted* amounts and for *specific* purposes, while with the Joint Stock Banks there are no restrictions as to amount, persons or purposes. While in this way non-cultivating farmers, or even speculators, can borrow on vacant land and on easy terms, the large investor really reaps the greatest benefit, for he, by a private investment of private funds, is permitted to go tax-free. In the practical working out of the scheme, still more pointed and detailed distinctions have been observed. The *alleged* advantages to *large* investors of *tax-free* Joint Stock Bank bonds have, *pending the litigation*, been made the subject of such advertisements as should shame even eager and keen-minded selling brokers. All this has been a subject for congressional attention, the details of which appear in a government printed document of November 13, 1919, entitled "Amendment to Federal Farm Loan Act. Hearings before the Committee of Banking and Currency of the House of Representatives on H. R. 8159, a bill to amend the Act of Congress, approved July 17, 1916, known as the Federal Farm Loan Act, to increase the limit of loans."

(i) So, even if any reason can be found to sustain the Act or the tax exemption therein as to the

Land Banks, there is no fair reason for so doing as to Joint Stock Banks.

The lower court (Rec. 27-29) really so recognized by saying:

“Now as to the Joint Stock Land Banks and their Farm Loan bonds, of course, I think all those present will admit that there is a possible line of cleavage between the two. That is to say, it would appear, almost, that you could take some sharp instrument and cut the Joint Stock Land Banks out of the Act, and that the Federal Land Banks and their bonds would function just the same. That is, there is no absolute connection, in so far as the system, as a system, is concerned, between the two, but it has been pointed out that these banks are to serve a different class of customers, those who require larger loans; that they have a distinct function to perform, along the same line as the Federal Land Banks.

They are incorporated into the same Act. We cannot leave out of mind that one great system is here being created, comprehensive in its nature, containing many parts, and all so interwoven and interrelated that each performs its appointed part in the development and administration of the entire system.

It may be said—perhaps the Supreme Court may say—that they are so far separated from, and not so necessarily connected with the system that they may be taken out, taken apart, and dealt with separately, but certain it is that they are thoroughly germane to the system, and certain it is that they have been dealt with in one comprehensive, systematic plan.

That being so, it does not seem to me, when I take into consideration the fact, also, that they have been, even though arbitrarily, cre-

ated depositaries of the government, created as financial agents of the government, that the arguments against them are so clear and convincing as they must be to warrant a court of first instance to overcome the presumption of constitutionality which must prevail, and to declare these Acts unconstitutional, even as to the Joint Stock Land Banks.

I am aware that in a certain very conspicuous instance, the court, in the interest of expedition, has deemed it wise to indulge the presumption of unconstitutionality in the first instance, instead of constitutionality. That is something that I cannot bring my mind to accept, and when these banks are thus designated as banks—as depositaries, and as financial agents, why, if the use is conceded in any degree, this court cannot consider the degree of their usefulness in that regard.

It stands there as the deliberate judgment of Congress that they are such, they are adapted to the use—even though their powers may have to be enlarged to make them most useful, they are adapted to the use that Congress has assigned them. That being so, all things considered, and there being no question here, nor can be in this court, as to the wisdom and practicability of this system, then in the absence of any complete unadaptability, the court must accept their status as declared.

But whatever might be my view on these Joint Stock Banks, certainly the matter must go to the Supreme Court.

Upon one branch of the question, as I say, I am unreservedly without doubt. Upon the other, I may say, also, that I have very little, if any, doubt, although I concede that there is a more debatable question there presented,

but certainly there ought not to be a division of the questions here involved.

There ought not to be any action taken which would halt a great public enterprise, certainly, as has been pointed out, to the very great disadvantage of its operation, and of the interests of parties who are dealing with it, but the whole question should be passed upon finally, as speedily as possible, and with the least inconvenience to anyone concerned, by the Supreme Court * * *."

But, after so saying, the Act was below upheld as to the Joint Stock, as well as the Land Banks. That this was possible seems inconceivable.

Respectfully submitted,

WM. MARSHALL BULLITT,
FRANK HAGERMAN,
Solicitors for Appellant.

APPENDIX.

Part 1—Judge Thayer's Opinion.

In the Circuit Court of the United States for the
Western Division of the Western District
of Missouri.

W. W. Bierce et al., Complainants,
vs.

No. 2483.
In Equity.

The Guardian Trust Company, Defendant.

Mr. Frank Hagerman, Mr. L. C. Krauthoff and
Mr. Max Pam for the complainants.

Mr. J. E. McKeighan, Mr. J. McD. Trimble and
Mr. T. L. Chadbourne, Jr., appeared for the de-
fendant.

Memorandum on Motion to Appoint a Receiver.

Thayer, Circuit Judge.

The subject-matter now before the court is a motion which was made on the filing of the complaint to appoint a receiver for the Guardian Trust Company, a Missouri corporation. The bill on which the application is based makes a great variety of allegations and is very voluminous. The affidavits and accompanying exhibits that have been filed by the respective parties either to support or overthrow the allegations of the complaint are also very numerous and lengthy. Owing to this fact and the complicated character of some of

the transactions that have been investigated, and the limited time at the disposal of the court—it will only be possible to state in a very general way for the information of counsel the conclusions that have been reached on the strength of which the accompanying order is based.

1. The bill of complaint as viewed by the court for the purpose of the present motion is a bill filed by minority stockholders to correct abuses of administration and to obtain the appointment of a receiver because of the mismanagement of the company's affairs and various *ultra vires* acts heretofore committed by the directors and managers who were in active control of the corporation. These acts, it is claimed, in substance, have led to a dissipation of the Company's assets and brought it to the verge of insolvency. The bill also charges, in substance, that acts of a similar nature are now in contemplation and will be committed in the future by those who are at present in control of the company if such action is not stayed by judicial process. Counsel will understand that the order made herein is not based upon the theory that the bill is one filed by the complainants to cancel and rescind their stock subscriptions on the ground of fraud, or upon the theory that the complainants are in a position at this time to maintain such a bill, although no decisive opinion need be expressed upon that point. Neither is the order herein based upon the theory that between November 4, 1899, and January 4, 1900, a valid resolution was adopted or that an agreement was entered into to go into liquidation, which resolution or agreement had the effect of impressing all the as-

sets of the Company with a trust of that date which may now be administered by a court of equity at the instance of the complainants. Counsel will understand that the court rejects for the present each of said theories and does not predicate its action thereon.

In passing, however, it may be said that such action as was taken by the Executive Committee of the Company or its Board of Directors, or other persons interested in the Company, at meetings or interviews between the dates last aforesaid, is of importance, in that it throws much light on the actual condition of the Company at that time and at the present moment. After reading all the affidavits and the records of the Company relative to what transpired at said meetings or interviews between the dates aforesaid, the court concludes that it was the unanimous opinion of all persons then connected with the Company who were conversant with its affairs that it was in a precarious condition; that practically all of its capital had been invested in stocks, bonds and notes and in real property which were not readily marketable; that many of its stocks, bonds and notes were worthless; that the value of the residue of its securities, as well as the value of much of its real property, was uncertain; that no considerable portion of its assets could be speedily reduced to money for lack of a market value, and that the Company was no longer in a condition to engage actively in the prosecution of the business which it had been organized to transact. In view of this condition of affairs existing at that time, the court concludes that it was impliedly understood and

agreed by the persons then in control of the Company, with possibly one or two exceptions, that further active operations should be suspended, at least for the time being; that the Executive Committee and Board of Directors should thenceforth endeavor to reduce the corporate assets to cash and with the proceeds liquidate the Company's debts so far as the proceeds would extend and that they should not for the present accept new business or embark in any new ventures. The court is satisfied that this policy was in fact pursued in accordance with the implied understanding aforesaid until some time in May, 1900, or for at least four or five months.

2. The real grievance disclosed by the bill and affidavits consists in the fact that the defendant Company during a period of years has persistently committed acts which must be regarded as in excess of its corporate powers, and by so doing has not only sustained grievous losses but has lost control of its capital having been compelled to pledge or hypothecate the bulk of its available assets as security for loans, so that it is not at the present time in a condition to be dealt with safely, or to transact the business which its charter authorizes it to transact, with a reasonable prospect of success.

The proof shows with reasonable certainty that the officers and directors of the defendant Company have made a practice of organizing other corporations to engage in various enterprises of a highly speculative character; that funds of the Company to a large amount have been invested in the stocks and bonds of such concerns, which had

at the time no market value; that money in considerable sums had been loaned to such companies, sometimes upon their stock as collateral, and on other occasions without any security; that some of these enterprises have been proved absolute failures, and that the money invested therein has been wholly lost, while other of such enterprises are in a precarious condition and the outcome thereof is doubtful and uncertain. The fact that officers, directors and employees of the Trust Company have generally served as officers and directors of such subsidiary companies and have held stock therein leads the court to conclude that the moneys of the Trust Company would not have been used to purchase the stock and bonds of such concerns and to supply them with capital except on the theory that they were mere adjuncts of the Trust Company and that the enterprises which it thus attempted to foster by the means aforesaid were its own adventures.

Moreover, in some cases, if not in all, there appears to have been such identity in the *personnel* of the governing bodies of these corporations and the governing body of the Trust Company that it is impossible to believe that the interests of either were fairly considered or properly guarded in any of the transactions and dealings which occurred between them.

In addition to the acts aforesaid the proof shows that the defendant Company has made large investments in real property apparently without a shadow of authority under its charter. Some of these investments may have been, and probably were, profitable, but other investments of that kind

will doubtless occasion a loss, and in any event such unauthorized investments have resulted in locking up much of the Company's available means and have impaired its usefulness.

Furthermore, the court entertains no doubt that the defendant Company has paid one, and probably several, dividends out of its general funds that were not earned, such payments being made for the purpose of allaying suspicion as to the condition of the Company and creating a false impression that it was in a prosperous condition.

Under the Missouri statute relating to trust companies the primary function of a trust company, as the name implies, is to execute trusts of all kinds and descriptions according to the rules which govern ordinary trustees, and to act as agent for the management, conservation and control of property, real or personal, which may at any time be committed to its custody, whether the owner be a natural or artificial person. When properly conducted such companies perform important and necessary functions in the business work which cannot as well be performed either by private individuals or co-partnerships. They have authority to receive money in trust from their customers and to accumulate it by loaning the same upon real estate or good collateral security. They also have power to issue debentures, provided they are secured by a pledge of mortgages or other securities which the company owns. But it was never intended that a trust company should go into the market as a borrower of money in large sums on its own notes to be employed in speculative ventures, as the defendant Company appears to have

done. The law contemplates that the business of such companies shall consist in loaning its own money or that of its customers on safe securities—not that it shall consist in borrowing money on its own notes in aid of doubtful enterprises, thereby imperiling its own solvency and disabling it from serving the public faithfully in its capacity as a trustee. In so far as such companies are authorized to buy and sell stocks, bonds and other negotiable securities the power is limited by fair intendment by the language of the Act to transactions in “investment securities,” which term must be understood to mean such securities as persons of ordinary prudence and capacity would purchase for the purpose of investment. Securities of the latter kind would ordinarily be those whose value can be ascertained with reasonable certainty and is not wholly dependent upon contingencies. It is doubtless true that when acting in the capacity of agent for another and pursuant to his instructions, a trust company can buy or sell for such other persons any kind of stocks or other negotiable securities as the customer may direct, but when making an investment of its own funds, or funds held in trust, or committed to it for accumulation and investment in its discretion, the law by necessary inference places restrictions upon the class of securities that may be bought or taken in pledge as collateral. As at present advised, the court is of opinion that the Act creating trust companies does not authorize the acquisition of securities by such companies either as an investment or as collateral for loans, unless they have an ascertainable market value and may be properly termed “investment se-

curities." If the value of a stock is purely hypothetical and speculative a trust company should not acquire it for either of the purposes last indicated. Owing to the functions which trust companies are intended to perform the public has a vital interest in their solvency and in confining them strictly to the transaction of such business as the Act authorizes. It was never intended that such companies should engage in the business of promoting hazardous and highly speculative enterprises, either by the acquisition of large blocks of stocks or bonds, or by loaning large sums of money, to companies or corporations engaged in such enterprises. It is well known that by so doing a trust company speedily becomes the real power behind such enterprises and oftentimes finds that its own solvency depends upon the success or failure of subsidiary companies in whose securities it has made large and improvident investments. Several notable examples might be cited in this circuit where a line of policy such as has apparently been pursued by the defendant Company has led to widespread disaster and great public distress and inconvenience.

In accordance with these views the court is constrained to conclude that the bill and affidavits disclose many *ultra vires* acts committed by the defendant Company during the past five years; and that these acts have not only led to the dissipation of its assets and to its present embarrassment, but have rendered it unsafe for the Company to continue the further transaction of its customary business until it has realized upon some of its assets and liquidated its present indebtedness.

3. With reference to the two suggestions made on the argument of the motion that the bill of complaint does not set out specifically the commission of any such *ultra vires* acts as are heretofore mentioned, and if it does, that they are past transactions of the Company of which the complainants were duly advised before they became stockholders, and for that reason cannot be heard at this time to complain, the court entertains the following views: First: That the *ultra vires* acts referred to above are generally alleged in the fourth and fifth paragraphs of the bill and are made sufficiently specific by the affidavits now on file which have been produced both by the defendant Company and by the complainants. But if this position is not tenable, in view of the present status of the litigation and the time already devoted to it and to an investigation of the Company's affairs, the court would deem it its duty to permit any defect in the existing allegations of the bill to be remedied by amendment; and, second, as respects the suggestion that the complainants bought their stock with knowledge of the past acts of the Company and are not entitled to complain, the court entertains the view that while the complainants did know of the character of many of the Trust Company's investments, yet they were doubtless mistaken as to their value, and the court is unable to say that the complainants were acquainted with all of the facts and circumstances which rendered the investments unauthorized and wrongful. It is not deemed probable, and is not proven, that the complainants had such knowledge in detail of all the precedent acts of the Company, at the time they purchased

its stock, as should now preclude them from making complaint or exercising the ordinary rights of shareholders. They were not themselves concerned in any of the unauthorized acts of the Company which are now called in question and most likely bought without investigating the transactions in detail.

4. For the reasons thus briefly outlined the court has reached the conclusion that it is its duty under the law, for the adequate protection of all interests, to place the assets of the Trust Company in the custody of a competent receiver until a final decree shall be rendered, or until some arrangement shall be made among the shareholders which will enable the Company to resume its business with adequate capital and conduct it on proper lines. Pending the receivership stockholders will be allowed to convene and elect directors and the receiver will be instructed, in the management and disposition of the assets of the Company, to conform to such requests preferred by the directors in meeting duly assembled as commend themselves to his judgment as being steps proper to be taken in the interest of creditors and the majority of the shareholders.

**Part 2—Report of Senate Committee on the Proposed
Repealing Act.**

CALENDAR No. 270.

65th Congress
2d Session.

SENATE.

Report
No. 317.

FEDERAL FARM LOAN ACT.

December 8, 1919.—Ordered to be printed.

Mr. McLean, from the Committee on Banking and
Currency, submitted the following

REPORT.

[To accompany S. 3109.]

The Committee on Banking and Currency, to whom was referred the bill (S. 3109) to amend section 26 of the act approved July 17, 1916, known as the Federal farm loan act, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

This bill removes the tax exemption from the bonds issued by the joint-stock land banks. It is the opinion of your committee that the tax-exemption privilege should never have been extended to the bonds. The accumulation of large aggregations of capital, wholly exempt from any and all forms of taxation, is wrong in principle and should be discontinued. The large taxpayers will gradually absorb these bonds which will contribute nothing to the support of the Government.

Four of these joint-stock land banks were chartered in 1917; 6 in 1918; and 20 in 1919, up to the

31st of October. The bonds already outstanding total \$46,255,000. The excess earnings of some of these banks indicate that they are making large profits, and it has been represented to your committee that they are likely to encroach upon the legitimate field now occupied by the farm-loan banks unless their activities are restricted.

The Secretary of the Treasury, in a communication to your committee, expresses the opinion that exemptions from taxation should be withdrawn from future issues of bonds of these banks.

A portion of a statement furnished your committee by the Federal Farm Loan Commission, showing the number and condition of the joint-stock land banks up to October 31, 1919, is printed below:

Statement showing number and condition of joint-stock land banks.

Joint-stock land banks.	Capital stock paid in.	Amount of farm loan bonds issued.	Excess earnings to date
1. Iowa, Sioux City, Iowa....\$	250,000	\$1,225,000	\$56,910.77
2. Virginian, Charleston, W. Va.....	250,000	2,600,000	26,560.38
3. Fletcher, Indianapolis, Ind.	300,000	3,280,000	.....
4. First, Chicago, Ill.....	1,250,000	14,500,000	77,865.84
5. Liberty, Salina, Kans.....	425,000	6,350,000	35,076.98
6. Mississippi, Memphis, Tenn.	250,000	700,000	5,800.91
7. Arkansas, Memphis, Tenn.	250,000	600,000	4,106.01
8. Lincoln, Lincoln, Nebr....	539,100	7,100,000	.....
9. Bankers, Milwaukee, Wis.	250,000	2,100,000	4,063.08
10. First, Fort Wayne, Ind...	250,000	500,000	4,332.21
11. First, Minneapolis, Minn..	250,000	1,300,000	1,162.13
12. Illinois, Monticello, Ill...	250,000	1,550,000	15,638.17
13. Montana, Helena, Mont...	250,000	500,000	.....
14. Fremont, Fremont, Nebr..	316,500	500,000	.....
15. Des Moines, Des Moines, Iowa.....	250,000	1,000,000	5,473.02
16. First Texas, Houston, Tex.	250,000	1,000,000	126.93
17. Peters, Omaha, Nebr.....	300,000	500,000	2,198.01
18. Colonial, Norfolk, Va....	125,000	.....	.....
19. Central Iowa, Des Moines, Iowa.....	250,000	250,000	.....
20. Virginia-Carolina, Norfolk, Va.....	125,000	.....	.....

21. Southern Minnesota, Red- wood Falls, Minn.....	250,000	700,000	461.91
22. Dallas, Dallas, Tex.....	239,500	.....	.....
23. Union, Richmond, Va.....	184,450	.....	.....
24. Guarantee, Wichita, Kans.	232,500	.....	.....
25. San Antonio, San Antonio, Tex.	250,000	.....	.....
26. California, San Francisco, Calif.	125,000	.....	198.24
27. Lafayette, Lafayette, Ind..	150,000	.....	.....
Total.	<u>7,812,050</u>	<u>46,255,000</u>	<u>239,974.69</u>
Less. . . . .	.....	.....	<u>99,933.94</u>
Net excess earnings....	.....	.....	140,040.65

Part 3—Bill to Repeal Tax Exemption of Joint Stock Banks.

CALENDAR NO. 270.

66th Congress,
2d Session.

S. 3109.

[Report No. 317.]

IN THE SENATE OF THE UNITED STATES.

September 30, 1919.

Mr. Smoot introduced the following bill, which was read twice and referred to the Committee on Banking and Currency.

December 8, 1919.

Reported by Mr. McLean, without amendment.

A BILL

To amend section 26 of the Act approved July 17, 1916, known as the Federal Farm Loan Act.

1 *Be it enacted by the Senate and House of*
2 *Representatives of the United States of Amer-*
3 *ica in Congress assembled,* That section 26 of
4 the Act of Congress approved July 17, 1916,
5 known as the Federal Farm Loan Act, be
6 amended to read as follows:

7 "SEC. 26. That every Federal land bank
8 and every national farm loan association, in-
9 cluding the capital and reserve or surplus
10 therein and the income derived therefrom,
11 shall be exempt from Federal, State, munici-
12 pal, and local taxation except taxes upon real
13 estate held, purchased, or taken by said bank
14 or association under the provisions of section
15 11 and section 13 of this Act. First mort-

1 gages executed to Federal land banks and
2 farm loan bonds issued by Federal land
3 banks, under the provisions of this Act, shall
4 be deemed and held to be instrumentalities of
5 the Government of the United States, and as
6 such they and the income derived therefrom
7 shall be exempt from Federal, State, municipi-
8 pal and local taxation.

9 "Shares in any joint stock land bank may
10 be included in the valuation of the personal
11 property of the owner or holder of such
12 shares in assessing taxes imposed by author-
13 ity of the State within which the bank is lo-
14 cated, and such assessment and taxation shall
15 be in manner and subject to conditions and
16 limitations contained in section 5219 of the
17 Revised Statutes with reference to the shares
18 of national banking associations.

19 "This amendment shall not apply to any
20 farm loan bond issued by any joint stock land
21 bank prior to the taking effect of this Act.
22 Such bonds and the income derived there-
23 from shall continue to be exempt from Fed-
24 eral, State, municipal and local taxation.

25 "Nothing herein shall be construed to ex-
26 empt the real property of Federal land banks
27 and national farm loan associations from
28 either State, county, or municipal taxes, to
29 the same extent, according to its value, as
30 other real property is taxed."

FILE COPY

JAN 5 1920

JAMES D. MAHER

FEDERAL FARM LOAN ACT CASE.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 592

199

CHAS. E. SMITH,

Appellant,

v's.

KANSAS CITY TITLE & TRUST CO., ET AL.,

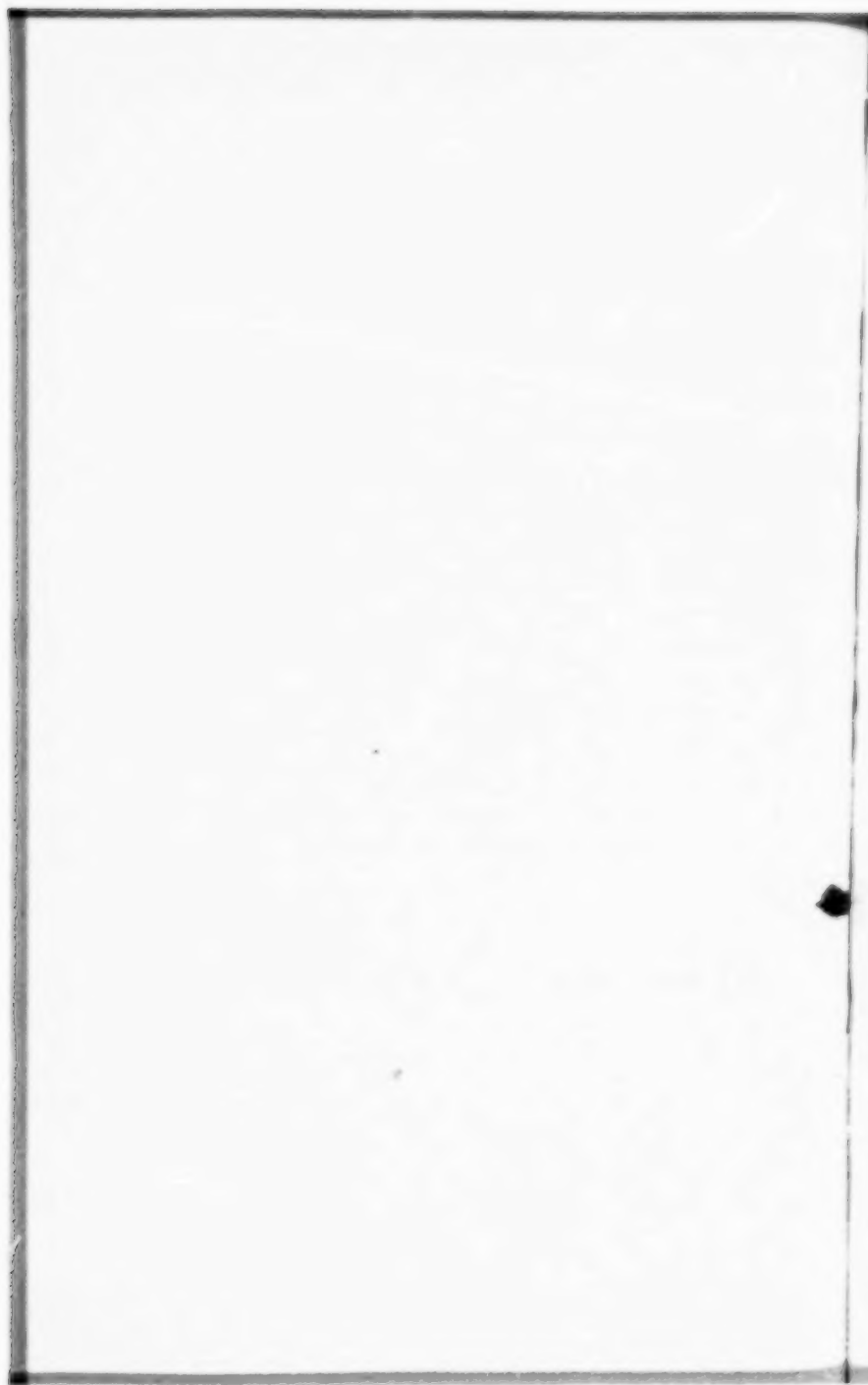
Appellees.

Appeal from the District Court of the United States for the
Western Division of the Western District of Missouri.

BRIEF FOR APPELLANT

In support of the contention that the Farm Loan Act is unconstitutional in so far as it (1) authorizes the creation of Joint Stock Land Banks and (2) exempts from State taxation farm mortgages and Farm Loan Bonds, whether issued by Joint Stock Land Banks or by Federal Land Banks.

FRANK HAGERMAN,
WM. MARSHALL BULLITT,
Counsel for Appellant.



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FEDERAL FARM LOAN ACT CASE.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1919.

No. 593.

CHAS. E. SMITH,

Appellant,

vs.

KANSAS CITY TITLE & TRUST CO., ET AL.,

Appellees.

*Appeal from the District Court of the United States
for the Western Division of the Western District of
Missouri.*

BRIEF FOR APPELLANT.

This appeal challenges the constitutionality of the FEDERAL FARM LOAN ACT of July 17, 1916 (39 Stat. 360) upon the ground that Congress had no power (1) to establish the system of Federal Land Banks, and especially of Joint Stock Land Banks, therein created; nor, in any event, (2) to exempt the farm mortgages and bonds, issued thereunder, from State taxation,—the latter ground being the

one upon which Senators SUTHERLAND, McCUMBER, CUMMINS and others opposed the passage of the Act in the Senate, in elaborate arguments which well repay perusal (see 53 Cong. Rec., pp. 6961-6965, 6968, 7245-7246, 7305-7317); and about the constitutionality of which its author (Senator HOLLIS), and its principal advocates had such grave doubts, that they openly admitted the necessity of adding some incidental features to the Act in order to give it a semblance of validity. (53 Cong. Rec., 6861, 7026, 7129, 7246, 7310. See also 6793, 6795-6.)

Its constitutionality would have been questioned earlier but for the Government's vigorous opposition to any attack on the Act during the war. The nullification of the Act would not cause the bonds heretofore issued to be a loss to the holders thereof (as the farm mortgages are a valid security), but it would merely subject them to State and Federal taxation. THE TAX EXEMPTION QUESTION IS THE REAL ISSUE SOUGHT TO BE SETTLED HERE.

STATEMENT OF THE CASE.

THE KANSAS TITLE & TRUST Co. was about to invest a large amount of its corporate and fiduciary funds in the purchase of Farm Loan Bonds issued respectively by Joint Stock Land Banks and by Federal Land Banks, solely because the company believed the bonds to be wholly tax exempt. (R. 11-16.)

CHAS. E. SMITH, a director and large stockholder in the company, objected to the proposed investment upon the ground that the tax exemption was void and the bonds were taxable; he voted against the resolution of purchase and then filed this suit in the District Court to enjoin the company from purchasing the bonds. (R. 15, 1.)

A Federal Land Bank and a Joint Stock Land Bank intervened and were made parties defendant; the ATTORNEY GENERAL of the United States appeared as *amicus curiae*; a motion was made to dismiss for want of equity; the motion was sustained; the plaintiff declined to plead further, the bill was dismissed, and this appeal was taken. (R. 19, 21, 30.)

THE FARM LOAN ACT.*

The sole purpose of creating the Farm Loan System (as the Act's language proves and as avowed in the Debates, in the various Committees' Reports, in the Government's official announcements, and in the literature cited in the margin*) was to enable owners of farm lands (not necessarily farmers) to borrow money on farm mortgages for *very long* terms (up to forty years), at extremely *low* interest rates.

Disregarding the numerous, badly arranged, confusing, needlessly complex and cross referenced *administrative* provisions, the Act provides for a system by which (a) farm lands

*The history of the movement to establish in the United States a system of rural credits based on the German plan of collective and co-operative borrowing and lending of money on long time farm mortgages can be found in "Agricultural Co-operation and Rural Credit in Europe" (1913) 63d Cong. 1st Session, Senate Doc. Nos. 17 and 214, Parts I, II and III; Id., 2d Session, Report of the American Commission (1914) Senate Doc. No. 261, Parts I, II; Id., Report of the U. S. Commission on Agricultural Credit (1914) Senate Doc. No. 380; 64th Cong. 1st Session, "Report of Joint Committee on Rural Credits" (1916) House Doc. No. 494; Id., "Report of Committee on Banking and Currency" (1916) House Report No. 630; Id., Conference Report (1916) Senate Doc. 472; See also "Rural Credits" (1915) 64th Cong., 1st Session, Senate Doc. No. 9; 63d Cong. 1st Session (1913) Senate Doc. No. 114; Hearings before the Subcommittee of the Committee on Banking and Currency (H. R.) on "Rural Credits" (1913); and Joint Hearings before the Subcommittees of the Senate and House Committees on Banking and Currency on "Rural Credits" (1914).

can be mortgaged to private investors, and (b) the mortgages, and the bonds secured thereby, will be wholly exempted from all State, Federal and municipal taxation, whether *ad valorem*, income or inheritance.

A twofold result is achieved; *first*, by virtue of the tax exemption, these particular farm mortgages bear a slightly lower interest rate than they would bear if they were taxable as Government bonds and other securities are taxed; *second*, a valuable form of private investment* is provided which enables persons of large wealth to avoid all income and super-taxes, so that a Farm Loan Bond in the hands of a wealthy man returns the equivalent of about 18 per cent per annum. (See advertisement of Joint Stock Land Banks as frontispiece.)

Merely to accomplish those two results, has the Federal Government express or implied power, under the Constitution, to forbid the States from taxing such mortgage bonds held by their citizens,—a species of property always recognized as subject to State taxation?

*See *Farmers Bank v. Minnesota*, 232 U. S. 516, 527-528; Cf market price of Liberty Bonds (91 to 99) with that (102) of Farm Loan Bonds!

The Act creates two distinct agencies for carrying out its objects, *i. e.*, Joint Stock Land Banks and Federal Land Banks, which must be considered separately.

I. JOINT STOCK LAND BANKS.

Any ten private individuals (bankers, merchants, or anyone at all) can organize a Joint Stock Bank with not less than \$250,000 capital stock, which is authorized to lend money *to any person, for any purpose, in unlimited amounts, repayable by small annual amortization payments in from five to forty years, on first mortgages of farm lands, regardless of whether the land is improved, occupied or even cultivated; and the bank can then issue its own collateral trust bonds, called "Farm Loan Bonds,"** which are to be secured by a deposit with a trustee, of the original farm mortgages and notes. (§ 16.)

The Act expressly provides that the Joint Stock Banks shall have *no power* (§ 16)

"to receive deposits or to transact any banking or other business not expressly authorized by the provisions of this Act."

*The Farm Loan Bonds issued by the Joint Stock Banks are to be of such form and color as to be readily distinguishable from those of the same name but issued by the Federal Land Banks. (§ 16.)

The only business "expressly authorized" by the Act (except to lend on farm mortgages and to issue its bonds secured thereby) is (1) that they may buy and sell Government bonds (§ 13, Clause Eight) which anyone may do; and (2) a potential possibility of acting as depository or financial agent for the government under § 6, which was inserted in an effort to make the Act constitutional.

"Sec. 6. That all Federal Land Banks and Joint Stock Land Banks organized under this Act, *when designated* for that purpose by the Secretary of the Treasury, shall be depositories of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositories of public money and financial agents of the Government, as may be required of them.

And the Secretary of the Treasury shall require of the Federal Land Banks and Joint Stock Land Banks thus designated satisfactory security by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government.

No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

27 Joint Stock Banks have been organized by private persons exclusively, with \$8,000,000 capital stock; and they have issued \$41,000,000 of their obligations, *i. e.*, Farm Loan Bonds secured by ordinary farm mortgage notes. (R. 5, 9.)

None of those banks have ever been designated as depositaries of public money nor have they ever performed any duties as financial agents of the Government. (R. 10.)

The Federal Government can never have any financial interest in these banks; nor can the banks receive deposits,* discount paper,

*While a Federal Land Bank is prohibited from accepting deposits from anyone "except from its own stockholders" (§§ 13, 14), the prohibition against a *Joint Stock Bank* accepting deposits is *absolute and unqualified*. (§ 16.) Hence Joint Stock Banks cannot even accept deposits from their own stockholders.

It may be suggested that § 16 provides that Joint Stock Banks shall have the powers of, and be subject to the restrictions and conditions imposed on, Federal Land Banks "except as otherwise provided," and "so far as such restrictions and conditions are applicable"; and, therefore, that the Joint Stock Banks are entitled to receive deposits from their own stockholders. However, it is quite obvious that they have no such power and it cannot be conferred upon them by any such an involved construction by reference. A subsequent portion of the same section provides expressly that they shall have *no power to receive deposits*; and this prohibition is *absolute* as to Joint Stock Banks, while it is *expressly qualified* as to Federal Land Banks by permitting the latter to receive deposits from their stockholders. Therefore, Joint Stock Banks cannot have the same powers as Federal Land Banks with respect to deposits.

lend money, deal in gold, silver, stocks, bonds (except U. S. bonds), foreign or domestic exchange, or do any of the other things which constitute the banking business.

The 27 Joint Stock Banks are "wholly owned" by "numerous private persons" (R. 5, 9),

"who are operating and will operate such Joint Stock Land Banks *purely and exclusively for their own individual and private profit* as in the case of any other purely private corporation."

Nevertheless, the mortgages taken, and the Farm Loan Bonds issued, by this exclusively private money lending company, are wholly exempted from every form of taxation, § 26 providing:

"First mortgages executed * * * to Joint Stock Land Banks, and Farm Loan Bonds issued under the provisions of this Act, shall be deemed and held to be *instrumentalities of the Government* of the United States, and *as such they and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation.*"

It is difficult to see exactly how (a) farm mortgages executed to a purely *privately* owned corporation and (b) the latter's obligations when held by *private* investors, can be

deemed "*instrumentalities* of the Government of the United States," and *hence*, with the income therefrom, *exempt from State taxation*.

Can the constitutionality of an Act authorizing private individuals to engage in the private business of lending on farm mortgages for private profit, be sustained (and their obligations when sold and owned by *private investors*, be exempted from all State taxation) by the simple expedient of *calling* them "*instrumentalities of the Government*" and of *authorizing* the Secretary of the Treasury to use them as Government depositaries or financial agents, although he has never in fact so used them? If so, what limit remains on the powers of Congress?

The Act also authorizes the creation of 12 additional banks, called Federal Land Banks, whose powers should be much more restricted than the Joint Stock Banks with respect to the *location* of the farm lands, the persons who might become *borrowers*, the *amount* of the individual farm mortgages permitted, and the *purposes* for which the loans must be made. They will now be considered:

II. FEDERAL LAND BANKS.

The Act provides that —

1. Twelve Federal Land Banks shall be organized, each with a minimum capital stock of \$750,000, divided into \$5 shares.*

Each of these banks is prohibited from accepting any deposits (except from its own stockholders, who, being borrowers, are not likely to be depositors to any considerable extent), or from paying interest on deposits, or transacting any banking business or indeed any other business not expressly authorized by the Act.

2. These banks are authorized to do but three things:

First. To lend (under a complicated plan of co-operative and collective groups of actual farmers called Farm Loan Associations), not exceeding \$10,000 to any one person upon a long term, first mortgage on farm lands (where the proceeds of the loan must be used

*Any part not subscribed for in 30 days by the general public, was to be temporarily taken by the United States, which should receive no dividends or other return thereon during the time of its temporary investment. Provision is made for the gradual retirement of the stock thus subscribed for by the United States, so that in a few years the stock will all be owned by the borrowers, thus imparting a certain co-operative or mutual feature to the management.

exclusively for the purchase or improvement of, or the refunding of a prior mortgage upon, farm lands), repayable in from five to forty years by small annual amortization payments.

Second. To issue and sell to the investing public, their own collateral trust bonds called Farm Loan Bonds, secured by the deposit with a trustee of the individual farm mortgages so taken.

As the insignificant capital of the banks would be quickly exhausted by the first loans (and as deposits could not be accepted), the only way the banks could obtain funds with which to make further loans, would be by selling the mortgages they had already taken. Instead of selling the individual mortgages of particular farmers, the collateral trust bond was adopted as more likely to prove attractive to the investing public.*

Third. To buy and sell United States bonds.

3. These banks (like the Joint Stock Banks) may be designated by the Secretary of the Treasury as depositaries of public money, and as financial agents of the Government; and (unlike the Joint Stock Banks), the Secretary of the Treasury is authorized to "make depos-

*The collateral trust bonds are also made the joint and several obligation of the twelve Federal Land Banks, thus making them a safer security than the individual farmer's mortgage would be, even if endorsed by a single Land Bank.

its for the temporary use of any Federal Land Bank" upon which it shall pay interest to the Government, such deposits to be callable at the demand of the Secretary and never to exceed \$6,000,000 in the aggregate. (§ 32.)

4. Complete tax exemption is given in the following language (§ 26):

"That every Federal Land Bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation" [excepting taxes upon its office and real estate taken for debt].

"*First mortgages* executed to Federal Land Banks * * * and *Farm Loan Bonds* issued under the provisions of this Act, shall be deemed and held to be *instrumentalities of the Government of the United States*, and as such they and the income derived therefrom, shall be *exempt* from Federal, State, municipal and local taxation."

12 Federal Land Banks were duly organized; the public took but a small amount of stock, and the United States temporarily subscribed for nearly \$9,000,000 stock, which has since been reduced to \$8,265,809. (R. 3, 9.)

These Federal Land Banks have loaned large sums on farm mortgages, repayable in

annual amortization installments extending over 36 years; have deposited the mortgages and notes with a Trustee (Farm Loan Registrar) and have issued against them \$285,600,000 of their own collateral trust obligations, called Farm Loan Bonds, due in 20 years, of which \$135,000,000 were purchased and are held in the Treasury of the United States, under an amendment of July 18, 1918. (40 Stat. 431; R. 4, 9.)

None of the banks have ever been designated as depositories of public money,* nor employed as financial agents of the Government excepting that three of the Banks assisted in making some seed grain loans to farmers out of the President's \$100,000,000 war fund. (R. 10.)

These banks, like the Joint Stock Banks, are prohibited from doing practically anything that is ordinarily embraced under the term banking business. They cannot receive deposits (excepting from their own stockhold-

*Under § 32 of the Act, the Secretary of the Treasury, shortly after the Banks were organized, made some deposits in the nature of loans for their temporary use, upon which they paid interest as upon a loan, all of which deposits or loans have been repaid to the Government. (R. 10: 2d Annual Report of Farm Loan Board, p. 9.)

ers), discount paper, deal in gold, silver, foreign or domestic exchange, bonds (except United States Bonds), or indeed do anything in the nature of a banking business. They are strictly confined to making loans on farm mortgages, to the issuance of Farm Loan Bonds (secured by deposits of such mortgages), and to the investment of the resulting funds in other farm mortgages or Government bonds.

What Federal function is performed by these banks to authorize the exemption of the mortgages and the Farm Loan Bonds in the hands of *private individuals*, from State taxation?

Amendment of January 18, 1918. There was such grave doubt as to the constitutionality of the Act, that notwithstanding complete tax exemption, the investing public would not purchase the Farm Loan Bonds; and consequently the banks, having quickly exhausted their limited capital, were unable to continue operations. An appeal was made to Congress; and, in the midst of the war, when the Government was straining every effort to sell its own bonds to meet war expenses, an Act was passed authorizing the Secretary of the Treasury to

buy \$200,000,000 of Farm Loan Bonds. (40 Stat. 431; Farm Loan Board's 1st Annual Report, p. 18; 2d Annual Report, pp. 15-16.)

In other words, the money raised by the Government for war purposes through taxation and the sale of Liberty Bonds, has been to the extent of about \$150,000,000, devoted to the purchase of Farm Loan Bonds in order to furnish the funds to lend to farmers at low rates of interest, and to afford an investment for wealthy persons which should be tax free. (R. 9.)

No constitutional objection is made to this use of Government money, as it can be sustained under the power of appropriation. The attack is made on the Act as it relates to the bonds sold to private investors.

ASSIGNMENTS OF ERROR.

The Court erred in sustaining the constitutionality of the Farm Loan Act, especially as applied to the Joint Stock Land Banks, and to the tax exemption of Farm Loan Bonds. (R. 33.)

SUMMARY OF POINTS DISCUSSED.

1. The only meaning, scope and effect of the Act is to establish, under the supervision of Federal officials, a system by which any owner of farm lands can borrow money thereon by a first mortgage repayable in a longer time and at a lower rate of interest than was previously possible—such result to be secured by a plan of collective mortgaging and by the exemption of the mortgages, notes and bonds from all forms of Federal and State taxation. (Infra, pp. 18-21.)

2. The Farm Loan Act so far as it creates Joint Stock Land Banks, is unconstitutional because Congress has no power to enable farmers to borrow money from the public at low interest rates; nor has it power, in order to accomplish such a result, to create a purely private corporation, and then, to exempt from State taxation (1) all farm mortgages executed to such a company, and (2) the obligations of such company (secured by the mortgages) when in the hands of the public. (Infra, pp. 21-71.)

3. The Farm Loan Act, so far as it creates Federal Land Banks, is unconstitutional, for the same reasons advanced with respect to the Joint Stock Banks; and its constitutionality is not saved as an alleged exercise of the Congressional power (1) to appropriate money, or (2) to borrow money on the credit of the United States. (Infra, pp. 72-.....)

FIRST POINT.

The only meaning, scope and effect of the Act is to establish, under the supervision of Federal officials, a system by which any owner of farm lands can borrow money thereon by a first mortgage repayable in a longer time and at a lower rate of interest than was previously possible—such result to be secured by a plan of collective mortgaging and by the exemption of the mortgages, notes and bonds from all forms of Federal and State taxation.

There is no dispute as to the meaning of the Act.

The language of the Act. It provides a system by which *any* person can mortgage his farm land to one or the other of two Federal corporations, who in turn can issue and sell to the public, their own obligations (Farm Loan Bonds) secured by such mortgage. The mortgages, bonds, and the income therefrom (and, in case of the Federal Land Banks, its capital, reserve, surplus, and the income therefrom) are then exempted from all State and other taxes. The accuracy of this statement of the Act will hardly be disputed.

*The intent of Congress and the Government's official announcements of the purpose and scope of the Act.** The Reports of Committees, the Debates, and the Governments' authorized announcements show, without qualification, that the *sole purpose* of Congress, and the *only object* sought to be obtained, was to provide a means by which the owners of farm lands might borrow money, on long time mortgages, at much lower rates of interest than they otherwise could obtain; and that this result was to be achieved principally by *exempting* the mortgages and bonds from every form of State and Federal taxation.

A number of extracts from the Reports, Debates and Announcements are collected in the Appendix.

In declaring the Federal Child Labor Law unconstitutional, this Court said (*Hammer v. Dagenhart*, 247 U. S. 251, 275):

*The debates and Reports of Committees may be resorted to not to vary, limit or broaden the construction of the language, but to advise the Court of the *intention* of Congress in order that such intention shall indicate the scope and purpose of the Act and the subject sought to be dealt with. (*U. S. v. St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318, and numerous cases there cited; *McLean v. U. S.*, 226 U. S. 374, 380; *Standard Oil Co. v. U. S.*, 221 U. S. 1, 50.)

"A statute must be judged by its natural and reasonable effect. *Collins v. New Hampshire*, 171 U. S. 30, 33, 34."

The cases cited in the margin* establish the rule to be that the constitutionality of a statute must be determined by its effect and operation as manifested by the natural and reasonable meaning of the words employed; and by that rule the Act is simply one to establish a system of farm mortgages.

This is not a case where an Act, which on its face is rested upon some *undisputed* power of Congress is contested upon the ground (1) that a *wrongful purpose* actuated Congress to pass it in order to accomplish indirectly some end not within its constitutional power (*McCray v. U. S.*, 195 U. S. 27, 53-56; *In Re Kollock*, 165 U. S. 526, 536; *U. S. v. Doremus*, 249 U. S. 86, 93), or (2) that the result of the exercise of such lawful power produces injurious effects or interferes with some State power. (*Flint v. Stone Tracy Co.*, 220 U. S. 107, 169.)

* (*Minnesota v. Barber*, 136 U. S. 313; *Yick Wo v. Hopkins*, 118 U. S. 356, 366; *Pure Oil Co. v. Minn.*, 248 U. S. 158; *Home Savings Bank v. Des Moines*, 205 U. S. 503, 510; *Lockner v. New York*, 198 U. S. 45, 60, 61, 64; *Dobbins v. Los Angeles*, 195 U. S. 223, 236; *Postal Telegraph Co. v. Taylor*, 192 U. S. 64, 73; *Bailey v. Ala.*, 219 U. S. 219, 238, 244; *Western Union v. Kansas*, 216 U. S. 1, 27-29; *Ludwig v. Western Union*, 216 U. S. 146, 162.)

The attack on the present Act asserts (a) that there is a total lack of power in Congress to deal with the subject matter, and (b) that this legislation bears no sort of relation to any power possessed by Congress.

SECOND POINT.

The Farm Loan Act so far as it creates Joint Stock Land Banks, is unconstitutional because Congress has no power to enable farmers to borrow money from the public at low interest rates; nor has it power, in order to accomplish such a result, to create a purely private corporation, and then, to exempt from State taxation (1) all farm mortgages executed to such a company, and (2) the obligations of such company (secured by the mortgages) when in the hands of the public.

In holding an Act of Congress unconstitutional (*U. S. v. Harris*, 106 U. S. 629, 636) this Court said that

"Every valid Act of Congress must find in the Constitution some warrant for its passage";

and then quoting from Justice STORY, laid down the following rule for testing the validity of Congressional Acts:

"Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the

power be *expressed* in the Constitution. If it be, the question is decided."

There is no express power in the Constitution, authorizing Congress to create a corporation for the purpose of dealing in farm mortgages, lending money thereon, or issuing its own obligations secured thereby, or to exempt from State taxation, farm mortgages or the bonds of corporations.

The Court then continued,

"If it be *not* expressed, the next inquiry must be whether it is properly an *incident* to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it." (Citing many authorities).

To what express power of Congress is the creation of the Joint Stock Banks properly an incident? How is it an incident thereto or in anywise appropriate to the *execution* of such power?

I.

So far as the Joint Stock Banks and the Farm Loan Bonds issued by them are concerned, the Act provides that private persons, with private capital, may organize such a company, for private profit, in which the Government has no financial interest or representation (§ 16); that the company may lend on

farm mortgages; that all farm mortgages (and the income therefrom), executed to such a company shall be exempt from all State and Federal taxation; and that the obligations issued by the company (called Farm Loan Bonds) and the income therefrom, secured by such farm mortgages, shall also be wholly exempt from all taxation. (§ 26.)

In the case of the Joint Stock Banks, there is not even the flimsy pretense (which nominally exists in the case of the Federal Land Banks) that the power of appropriation is involved or that the money raised by the mortgages is to be used for agricultural development. There is *no limit or restriction whatever* as to the *purposes* for which the money loaned may be used, as Joint Stock Banks are expressly exempted from the limitations imposed upon Federal Land Banks in that respect. (Cf. § 16; § 12, Clause Fourth (a), (b), (c), (d).)*

*Even the co-operative and collective plan of borrowing by the farmers; the joint and several liability of the banks, and the full degree of Federal supervision, which exist in the case of the Federal Land Banks and were the strongest arguments advanced in Congress in favor of the Act, were specifically *dispensed with* in the case of the Joint Stock Banks, because some farmers might object to a co-operative undertaking with their neighbors, or to the publicity and scrutiny thereby entailed. (Senate Rep. 144, p. 11; House Rep. 630, p. 910; 1st Annual Rep. of Federal Farm Loan Board, p. 22.)

For example, an anarchist owning unimproved, vacant, uncultivated farm lands can mortgage them to a Joint Stock Bank in order to use the money to advance the cause of Bolshevism; and, yet, the mortgage, the income therefrom, the collateral trust bond (Farm Loan Bond) issued against it and secured thereby, and the income therefrom, are *wholly exempt* from all State and Federal taxation.

The banks are expressly prohibited from receiving deposits or doing any banking or other business (§ 16); or, as repeatedly stated in the Committees' Reports and in the Government's bulletins:

"Joint Stock Land Banks are not permitted to engage in *any* business but making farm mortgage loans and issuing bonds" (64 Cong. 1st Sess. Senate Rep. 144, p. 11; House Doc. 494, p. 14; Report 630, p. 10).

and

"These Joint Stock Land Banks are *private institutions* intended for the investment of *private capital*" (Farm Loan Primer, p. 15; Ed. July 23d, 1918).

The bill alleges, and the demurrer concedes, that private persons as shareholders own and operate the Joint Stock Banks purely and exclusively for their own individual and private

profit, as in the case of any other purely private corporation. (R. 5.) No Government money can, under any circumstances, ever be invested in any Farm Loan Bonds issued by Joint Stock Banks. (§ 6, 32; Act Jan. 18, 1918, 40 Stat. 431.)

The foregoing review demonstrates that the Joint Stock Banks are engaged exclusively in the ordinary private business of lending on farm mortgages and of selling to the investing public "collateral trust" bonds thereon, just as any private individual or State corporation might do; and that this business has no sort of public nature or connection with the Federal Government, but is of a wholly private character. The business does not in the remotest degree tend to carry into execution any express power of Congress; and hence no implied power exists in Congress to authorize the carrying on of this purely private business.

If this proposition should be disputed, then we ask *what* is the legitimate end within the scope of the Constitution to the accomplishment of which this purely private business is an appropriate means?

A moment's reflection will show that it is

impossible to indicate any of the objects entrusted to Congress by the Constitution which are in the remotest degree accomplished by the business of private individuals lending money to land owners on farm mortgages, and selling them to the public, which, after all, is the Joint Stock Land Banks' only business.

II.

The Government's argument in support of the Joint Stock Banks is this:

Congress has the power to create depositaries of public money and financial agents of the Government (*McCulloch v. Maryland*, 4 Wheat. 316; *Farmers &c Nat. Bk. v. Dearing*, 91 U. S. 29); it may also confer thereon the right to do a private business which otherwise would not be within the implied power of Congress. (*Osborn v. Bank*, 9 Wheat. 738, 864; *First National Bank v. Union Trust Co.*, 244 U. S. 416); and, from that premise the Government deduces the conclusion that because Congress (§ 6) authorized the Secretary of the Treasury to designate the Joint Stock Banks depositaries and financial agents, it was also entitled to confer upon them the right to con-

duct the private business of lending on farm mortgages.

As the Joint Stock Banks have never been designated, nor have they acted, as depositaries or financial agents (R. 5, 10), the Government's contention amounts to the assertion, that Congress *acquires the right* to create a corporation, to endow it with the power to do things which Congress has no right to regulate or control, and to exempt it from the power of the States, by the simple expedient of declaring that the Government may, *if it chooses*, use a corporation as its agent in some particular (but without ever so using it).

Such a claim of Congressional authority has never before been advanced in this Court and must be promptly rejected.

Congress does not have the power to create a corporation to engage in a purely private business which is beyond Congressional control by merely conferring upon it the potential power (which never has been, and ~~may~~ never be, exercised), to act for the Government, when such private business does not bear any possible relation toward promoting the potential power to perform a Federal service.

The numerous arguments that have been advanced in support of the Act, amount to the rough-and-ready claim that because Congress has the implied power to establish banks which *inter alia* deal with ordinary *commercial* credits, *consequently*, it must also have the right to establish banks to deal with *agricultural* credit; but the authors of those arguments, confused by the use of the term "Bank," have failed to appreciate the grounds upon which Congress is authorized to establish what they term a bank of commercial credit.

When the grounds upon which the power of Congress to establish the old Bank of the United States and the present National Banking System, are critically examined, it will be seen that the power to create such banks is rested upon circumstances wholly absent in the case of the Joint Stock Banks.

Both the First and the Second Banks of the United States and the present National Banks were created immediately after, or during, a great war, for the express purpose of affording the *means* for the *execution* of important *express* powers vested in Congress.

We submit,

I. The decisions in McCulloch v. Maryland, Osborn v. Bank of U. S. and Farmers' Natl. Bank v. Dearing, do not afford any basis for the creation of the Joint Stock Banks.

1. The Joint Stock Banks are expressly *prohibited* from doing every single thing which was held to be the constitutional basis for the incorporation of the First and Second Banks of the United States and of the National Banking System; while, on the other hand, the only thing the Joint Stock Banks are *permitted* to do (*i. e.*, lend on real estate mortgages) was expressly *prohibited* to both the Banks of the United States, and, until 1913, to all National Banks.

Therefore, the creation of the Joint Stock Banks (with but one function to perform and denied all others) cannot be based upon the arguments and considerations which justified the creation of the old Bank of the United States and the National Banks who were *prohibited* that *one* function and *given all the others?*

2. (a) The authorities cited in the margin* show that the First and Second Banks of the United States were in fact *the means actually used* by the Government to carry on its fiscal operations; to obtain loans in anticipation of revenues; to facilitate the payment of Federal taxes; to furnish a uniform and orderly currency on a sound specie basis; to collect, safeguard and transport money, and to transfer public funds from place to place (without cost to the Government or loss to it on account of the difference in exchange) as the exigencies of the Nation required.

The appropriateness, if not the absolute necessity for the Second Bank of the United States as a national agency, arose from the fact that there was an utter chaos in banking; the

*BANK OF THE UNITED STATES. *McCulloch v. Maryland*, 4 Wheat. 316, 407-409; *Osborn v. Bank*, 9 Wheat. 738, 861-864; Beveridge's *Life of John Marshall*, Vol. 4, pp. 171, 176-195; Holdsworth & Dewey's "First and Second Banks of the United States"; McMaster's *History of the People of the United States*, Vol. 2, p. 29; Id. Vol. 4, p. 280 *et seq.*; especially pages 300-318; Hamilton's *Report on a National Bank*.

NATIONAL BANKING SYSTEM. Lincoln's Veto Message of June 23, 1862 (6 Messages and Papers of the Presidents, pp. 87, 88); Lincoln's 2nd Annual Message, Dec. 1, 1862 (Id., pp. 126, 129-130); Rhodes' *History of the United States*, Vol. 4, pp. 237-239; Noyes' "History of the National Banking Currency," p. 41; Davis' "The Origin of the National Banking System," pp. 79, 80, 89, 106, 109; *Veazie Bank v. Fenno*, 8 Wall. 533, 536-539, 548.

Government had been deprived of its almost indispensable fiscal agent (the First Bank of the United States); the Government could not negotiate loans; taxes were collected with great difficulty, loss, and delay; the Treasury was so near bankrupt that the Department of State did not have sufficient money to pay its stationery bill; in desperation, the Treasury exchanged 6 per cent Government bonds for the notes of State Banks, thereby losing \$5,000,000 from worthless bank bills. The local State Banks became the sole depositaries for Government funds, the worthless currency of such banks flooded the country, interfering with commerce and all business, while the suspension of specie payments by the State Banks rendered a uniform national currency indispensable.

(b) The National Banking System was established, and was *in fact used* by the Government, in order to furnish a sound and uniform currency and to prevent injurious fluctuations thereof; to facilitate the payment of troops, to receive subscriptions for, to distribute among the public, and to provide a market for, Government bonds which were used as the basis of the notes issued by the banks; to furnish de-

positaries at convenient places throughout the country for public funds, at a time when every collector of Federal taxes was afraid to deposit the money in State Banks, was responsible for the funds collected and yet was compelled to hold it in his personal possession, subject to the danger of fire and accident, as the Government did not even furnish an office safe for that purpose.*

(c) By what authority can Congress create a bank?

In *McCulloch v. Maryland*, 4 Wheat., 316, the implied power of Congress to incorporate a bank was based upon the ground that in order to carry out the *express* powers to collect taxes, to borrow money, to regulate commerce, to carry on war and to raise and support armies and navies, it was absolutely necessary for the Government to conduct fiscal operations; that a bank was a convenient, useful and essential instrument in the prosecution of fiscal operations and therefore Congress was authorized to create the bank and use it for those purposes.

In *Osborn v. Bank*, 9 Wheat., 738, the Court re-examined the basis of the *McCulloch* deci-

*For authorities, see footnote at p. 30, *supra*.

sion and reaffirmed it, holding (as the marginal authorities on p. 30, *supra*, demonstrate) that the Bank of the United States was not created for private purposes, but was created for National purposes only; that the operations of the Bank gave value to the currency in which all governmental transactions were conducted and acted as a machine for the money transactions of the Government; that "as a machine for the fiscal operations of the Government" it was *essential* for the Bank to engage in general banking business, as otherwise, the Bank could not perform these services for the Government which were exacted from it, and for which it was created.

Considering that the Bank of the United States was chartered by Congress for the *express purpose* of performing, and that it *did* perform, the indispensable governmental services necessary to carry into effect important, express and exclusive powers of Congress, how can it be contended that *those* decisions afford *any warrant* for Congress to create the Joint Stock Banks?

The basis of the *McCulloch* and *Osborn* cases was not even that the banks were mere passive depositaries or undefined financial agents, but

that by virtue of engaging in general banking, they were enabled to perform a great many active and indispensable services *essential* to be performed in order to carry on Government business.

In the case at bar, the Joint Stock Banks are expressly *prohibited* from doing those things which authorized the creation of the Bank of the United States. The private business of the Joint Stock Banks cannot in any conceivable manner serve as a means for carrying any Congressional powers into execution; nor do the Joint Stock Banks in fact perform any duties as depositaries or financial agents.*

If it should be suggested that the mere potential power to act as depositary and fiscal agent, *ipso facto* authorizes these institutions to carry on a purely private business, exempted from State control and taxation, then *a fortiori* there would be exempted from State control and taxation the numberless State Banks and Trust Companies which, by

*If, at some future time, the Joint Stock Banks should be designated by the Secretary of the Treasury as depositaries and financial agents, and should then perform services of that character to such an extent that their private business in farm mortgage lending was either an incident or necessary to the adequate performance of such governmental duties, a different question would be presented which it is not necessary now to consider.

the Second, Third and Fourth Liberty Bond Acts were not only *designated*, but in fact *acted* as "depositories" and "fiscal agents" of the United States "in connection with the operations of selling and delivering any bonds, certificates of indebtedness or War Savings Certificates of the United States."

Certainly institutions which *in fact* act as depositories and fiscal agents of the United States pursuant to express statutory authority, would be more clearly exempted from State taxation than a Joint Stock Bank which has a mere possibility in that direction, but which has never been vitalized by designation from the Secretary of the Treasury.

Since the passage of the Farm Loan Act, the United States has gone through the greatest war in history; its fiscal operations have exceeded many fold its previous combined operations since the beginning of the Government; it has called into service, as a means for carrying out its fiscal powers, innumerable agencies, individual and corporate, none of which were ever deemed to be thereby exempted from State taxation or control; and yet it is now solemnly argued that the Joint Stock Banks, engaged in a wholly private business, are ex-

empted, although they have never as yet been designated to act as depositaries or fiscal agents.

3. On the other hand, the *McCulloch* and *Osborn* cases are controlling authorities against the validity of the Joint Stock Banks.

In *McCulloch v. Maryland*, after holding that Congress could charter that particular bank because it was an appropriate means, plainly adapted to a legitimate end within the scope of the express powers granted by the Constitution, the CHIEF JUSTICE emphasized the fact that in order to justify the incorporation of a Bank it must be an *appropriate* measure to carry out *express* powers.

The Court said (p. 423) :

“Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects *not* entrusted to the Government, it would become the painful duty of this tribunal should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is *really calculated* to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.”

In view of the debates of Congress, the Reports of the Committees, the official announcements of the Government, and the reasonable and natural effect of the language used in the Acts, can anyone doubt that Congress undertook the accomplishment of an object not entrusted to it, namely, to provide a farm loan mortgage system throughout the States; and attempted to save its constitutionality by the pretext of declaring that the Secretary of the Treasury might designate the corporation a depository and financial agent? If the present state of case does not fall directly within the above language of CHIEF JUSTICE MARSHALL, what case could fall within it?

Again, in *Osborn v. Bank*, the great Chief Justice, while sustaining the validity of the bank's creation, notwithstanding the fact that it engaged in private business while carrying out its governmental functions, emphasized the fact that the bank was created *primarily for national purposes* and that it was only necessary to allow it to do private business in order to effectively carry out the national purposes for which it was particularly created. In other words, in order to be an effective *means* for performing the fiscal operations of the

Government, it was desirable that the Bank should be engaged in the private banking business as well; because, for example, if the Bank collected public revenues and locked them up as in a subtreasury, the country would be unduly drained of currency with many resultant governmental disadvantages. (See, also, Lincoln's speech in reply to Douglas, December, 1839: Vol. 1, pp. 197-198 of Lincoln's Writings, Constitutional Edition.)

Continuing, the CHIEF JUSTICE said that if the Bank had been created "having private trade and private profit for its great end and principal object" it would have been taxable by the State (and do not the Joint Stock Banks have as their great end and principal object, private trade and private profit)—but that the Bank of the United States was *not* chartered principally for private profit, saying (p. 859):

"This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the *casual circumstance* of its being employed by the Government in the transaction of its fiscal affairs would no more exempt its private business from the operation of that power than it would exempt the private busi-

ness of any individual employed in the same manner."

Does not that language precisely describe the Joint Stock Banks, except that they are not even *casually* employed by the Government, never having been designated by the Treasury Department for that service, and may never be?

Emphasizing that Congress could not create a corporation to carry on a private business, the Court declared that the Bank of the United States (as the history of the times demonstrates, p. 30, *supra*) was not chartered in order that private individuals might carry on the banking business, but that it was created especially as a means for executing the powers vested in Congress, saying (p. 860) :

"The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the Government, is admitted; but the Bank is not such an individual or company. It was not created for its own sake, or for private purposes. *It has never been supposed that Congress could create such a cor-*

poration. The whole opinion of the court in the case of *M'Culloch v. The State of Maryland* is founded on, and sustained by the idea that the Bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the Government of the United States.' It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was *created*, in the form in which it now appears, for *national purposes only*."

Will anyone have the hardihood to contend that the Joint Stock Banks were only created in order to enable Congress to carry out national purposes vested in it?

Referring to the Bank's power to transact private, as well as public, business, the Court said (p. 861):

"Why is it that Congress can incorporate or create a Bank? This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government. *Can this instrument, on any rational calculation, effect its object unless it be endowed with that faculty of lending and dealing in money which is conferred by its charter?* If it can, if it be as competent to the purposes of government without as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then

this faculty is necessary to the legitimate operations of government, and was constitutionally and rightfully engrafted on the institution."

Would not Joint Stock Banks be as competent to act as depositaries and financial agents of the government, *without* the added faculties of lending on farm mortgages, as *with* it?

The Court next decided that, as a matter of fact, it was necessary for the Bank, in performing its functions "as a machine for the money transactions of the Government" to "be endowed with that faculty of lending and dealing in money which is conferred by its charter" and in short, that the private trade of lending and dealing in money, was *necessary* to enable the Bank to perform the very services for which it was created.

The Farm Loan Act expressly prohibited the Joint Stock Banks from receiving deposits or transacting any banking or other business except that of lending on farm mortgages?

For what express national purposes were the Joint Stock Banks created? In what way is such national purpose dependent for its proper execution, upon the lending of A's money to B at low rates, and exempting its transactions

from State taxation? What fiscal operations of the Government are aided by the private business of farm mortgages? In what way is that branch of the business necessary to enable a Joint Stock Bank to perform any national purpose?

II. Osborn v. Bank and 1st National Bank v. Union Trust Co. do not support the contention that Congress has the power to create the Joint Stock Banks for the purpose of engaging in the Farm Mortgage business.

Remembering that the Joint Stock Banks are prohibited from doing any banking business and are confined to the business of farm mortgage lending, let us examine the *Osborn* and *Union Trust Co.* cases to see what bearing they have on the subject.

(a) In the *Osborn* case, as we have just seen, it was held that the business of general banking conducted for private profit, was, of and in itself, *essential* to be carried on, in order to furnish the necessary facilities that the corporation might in turn act "as a machine for the money transactions of the Government"; and for that reason alone, it was held that Congress had the right to endow the Bank

with ordinary banking functions as a necessary means for executing conceded powers of Congress. But certainly it cannot be contended that the farm mortgage business bears any relation whatever to the execution by the Joint Stock Banks of any express power of Congress, especially as the Joint Stock Banks have never been designated to act.

(b) Since the creation of the National Banking System, almost every State in the Union has passed laws to permit a corporation to exercise both commercial banking powers and *fiduciary* powers.

In 1913 Congress, by the Federal Reserve Act, authorized National Banks to exercise fiduciary powers.

In *First National Bank v. Union Trust Co.*, 244 U. S. 416, it was held that Congress had the constitutional power to endow national banks with the capacity to transact private fiduciary business. The decision was based upon the ground that while ordinarily it might be beyond the power of Congress to enter the fiduciary field, yet, as State banks had very generally taken on such powers and had thereby obtained an advantage over National

Banks, it was competent for Congress to give them these additional powers in order to make the operation of the National Banks successful.

The Court said the ruling in *Osborn v. Bank* was (p. 420):

“that although a particular character of business might not be when isolatedly considered within the implied power of Congress,”

yet

“if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful.”

That is exactly our explanation of the *Osborn* case (pp. 32, 33, 37, *supra*), namely, that in order to enable the Bank successfully to perform its functions as a machine for the fiscal operations of the Government, Congress could authorize it to conduct such private banking business as tended to make it a more effective Government agent.

The Court criticised the lower court because it had considered the power of Congress to enter the fiduciary field as an independent question and had not considered it as a neces-

sary incident to the performance of the Bank's governmental functions, saying (p. 424) that the lower court

"instead of testing the existence of the implied power to grant the particular functions in question by considering the bank as created by Congress as an entity with all the functions and attributes conferred upon it, rested the determination as to such power upon a separation of the particular functions from the other attributes and functions of the bank and ascertained the existence of the implied authority to confer them by considering them as segregated, that is, by disregarding their relation to the bank as component parts of its operations—a doctrine, which, as we have seen, was in the most express terms held to be unsound in both of the cases [*McCulloch v. Maryland* and *Osborn v. Bank*]."

Again the Court said:

"What those cases [*McCulloch* and *Osborn*] established was that although a business was of a private nature and subject to State regulation, if it was of such a character as to cause it to be incidental to the successful discharge, by a bank chartered by Congress, of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as a part of its public authority.
* * * From this it must also follow that even although a business be of such a charac-

ter that it is not inherently considered susceptible of being included by Congress in the powers conferred on national banks, that rule would cease to apply if by state law state banking corporations, trust companies, or others which by reason of their business are rivals or *quasi*-rivals of national banks, are permitted to carry on such business."

Joint Stock Banks are not only *not* national banks, but are prohibited from doing everything that national banks are authorized to do.

Can it be successfully contended that because Congress uses National Banks as a means for the execution of conceded constitutional powers and may confer upon them private powers deemed necessary for the successful performance of their public duties, it is also competent for Congress primarily to confer such private powers upon a corporation which performs *no* public functions? Or, putting it in a slightly different way, can Congress assume the power to authorize corporations to enter upon fields of activity reserved to the States, by the simple declaration that such corporation *may*, at some future time, be used, not as National Banks are used, but as an incidental and unimportant governmental

agency wholly unrelated to the private business sought to be authorized? If Congress has that power, then this government ceases to be one of enumerated powers and Congress can enter upon any prohibited field of endeavor.

(c) As most State Banks are authorized to lend upon real estate mortgages, it was, of course, a mere matter of expediency whether Congress should authorize National Banks to enter that field; but that is because the National Banks are actually employed as the *means* of executing the express powers of Congress; and the addition of certain private powers falls clearly within the doctrine of the *Osborn* and *Union Trust Co.* cases. But it is a very different thing for Congress to enter primarily upon a prohibited field and endeavor to justify it, not even by employing the corporation as a Government agent, but by merely declaring that it shall have a possible power to act as such Government agent, without such power being actually exercised.

If the doctrine contended for by the Government be sound, is there any limit to the fields of private endeavor in which Congress may enter?

Before the Farm Loan Act was passed, National Banks had been given the power to lend on farm mortgages for terms of not exceeding five years. If Congress had thought it desirable to give National Banks the power to lend on farm mortgages for longer terms, no question of its constitutionality could probably be raised, as such a function was within the discretion of Congress to declare necessary to the performance of the bank's public duty. Such an exercise of discretion by Congress would probably be beyond judicial review, because, for many obvious reasons, Congress would be restrained from going beyond what was reasonably necessary or appropriate. But no such restraining influence protects the people from the encroachments of Congress if it may enter upon a prohibited field without the existence of an actual public agency to which such field is incidental.

III. The farm mortgages executed to the Joint Stock Banks and the Farm Loan Bonds issued by them and held by the general public, are subject to State taxation.

Since the argument below the Joint Stock Banks have been selling both the individual

farm mortgages to them as well as Farm Loan Bonds issued by them; and the frontispiece to this Brief illustrates the effect of the tax exemption, the value of which will be increased as States, like New York, seek to tax incomes for State purposes.

The States have unquestioned power to tax (1) mortgages and (2) corporate bonds or notes, held by their citizens or kept within their limits.*

The power to tax exists concurrently in both the State and Federal Governments; and is equally indispensable to the existence of each (*McCulloch v. Maryland*, 4 Wheat. 316, 425; *Lane Co. v. Oregon*, 7 Wall. 71, 76, 77).

The Constitution does not expressly prohibit the States from taxing the instrumentalities of the Federal Government, and contains no restriction whatever on the power of either to tax, except a few express prohibitions not here material**; nor does it grant any power

**Savings Society v. Multnomah Co.*, 169 U. S. 421, 426, 427, and cases there cited; *Kirtland v. Hotchkiss*, 100 U. S. 491, 498; *New Orleans v. Stempel*, 175 U. S. 309, 322; *Bristol v. Washington Co.*, 177 U. S. 133; *De Ganay v. Lederer*, 250 U. S. 376, 381, 382, and cases there cited.

***On Congress*: No tax on exports; direct taxes must be apportioned; indirect taxes must be uniform; *On the States*: No tax on exports; no tax on imports, except for inspection purposes; no duty on tonnage.

to Congress to exempt property from State taxation or otherwise to control State action as to taxes.

Nevertheless, by the Farm Loan Act Congress has attempted to deprive the States of the power to tax a species of property which has always been taxed and is one of the principal sources of revenue to many States, counties and cities.

Where does Congress obtain such a power? Certainly there is no *express* grant. Is there an implied power to exempt property from State taxation? If so, to what express power is it incidental?

The answer to these questions is that there are certain *implied* limitations on the taxing power of both the State and Federal Governments arising out of the very nature of our dual system of Government (*McCulloch v. Maryland*, 4 Wheat. 316, 425, 426; *The Collector v. Day*, 11 Wall. 113, 123; *U. S. v. Railroad Co.*, 17 Wall. 322, 327; *Railroad Co. v. Peniston*, 18 Wall. 5, 30; *Dobbins v. Commissioners*, 16 Pet. 435, 447; *Van Brocklin v. Tennessee*, 117 U. S. 151, 157 *et seq.*); that any restriction upon the State's power to tax arises from the operation of the Constitution itself;

and that Congress cannot, by any declaration of exemption, create one that would not have equally existed without such declaration. In other words, any attempt by Congress to exempt property from State taxation, if valid, is merely declaratory of what the exemption would have been anyway, without such declaration.

This leads us to consider the nature of the implied limitations on the taxing power, which have been consistently applied by this Court for just 100 years.

The doctrine was first announced by Chief Justice MARSHALL in *McCulloch v. Maryland*; and all subsequent cases have been applications of that principle, which has never been departed from, and of which the statutes are but declaratory.

Shortly after the Second Bank of the United States was incorporated for the express purpose of furnishing a means by which the fiscal operations of the Government might be conducted, numerous States endeavored to exterminate the Bank by the weapon of State taxation. At least eight States (Indiana, Maryland, Tennessee, Georgia, Illinois, North Caro-

lina, Kentucky and Ohio) passed laws which either directly prohibited the Bank from doing business within their limits, or imposed ruinous taxes upon it, or its branches, for the privilege of transacting business within the State, the taxes running as high as \$50,000 or \$60,000 a year upon each branch in Tennessee, Kentucky and Ohio (Beveridge's *Marshall*, Vol. IV, p. 207).

A Maryland Statute prohibited any Bank (other than Maryland State Banks) from issuing any notes except of certain specified denominations, which must be upon stamped paper, the amount of the stamps varying from \$0.10 to \$20, obtainable only from the State, in lieu of which a tax of \$15,000 a year was imposed.

The validity of this statute as applied to the Bank of the United States, arose in *McCulloch v. Maryland*. After first holding, as heretofore pointed out, that Congress had the power to charter the Bank as a means of executing its fiscal operations, the Court held that a State could not tax the *means* employed by Congress to execute its powers; and this conclusion was based upon the ground that, as, the power to tax involved the power to destroy,

the States might so heavily tax the means or instruments employed by the Government in the execution of its national powers as to prevent the Government from functioning. Chief Justice MARSHALL stated his conclusions in the following language, which defines the implied limitation upon the taxing power of the States (4 Wheat. 436) :

“The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a *tax paid by the real property* of the bank, in common with the other real property within the state, nor to a *tax imposed on the interest which the citizens of Maryland may hold in this institution*, in common with other property of the same description throughout the State.

But this is a tax on the *operations* of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

In *Osborn v. Bank* (involving the validity of an Ohio law passed "for the avowed purpose of expelling the Bank from the State" and imposing an annual tax of \$100,000 as a privilege for doing business), it was held that as a matter of fact the private, as well as the public, operations of the Bank were *essential* to the performance of its services to the Government, and that a State could not tax it for the privilege of doing business.

In response to the contention of counsel (9 Wheat. 777, 794, 795) that in order for the Bank to be exempt from State taxation, Congress must insert a specific clause of exemption in the charter, the Court pointed out in the following language that the exemption from State taxation did not rest upon the exercise by Congress of any power to declare an exemption, but was incidental to the creation of the instrumentality itself and that the judicial power was the instrument to see that the necessary security of governmental instru-

mentalities from State Interference was obtained:

“It is contended that, admitting Congress to possess the power, this *exemption* ought to have been *expressly asserted* in the act of incorporation; and, not being expressed, ought not to be implied by the court.

It is not unusual for a legislative act to involve consequences which are not expressed. An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of Congress to imply, without expressing, this very exemption from State control which is said to be so objectionable in this instance. The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while in the line of duty; and yet this protection is not expressed in any act of Congress. It is incidental to, and is implied in, the several acts by which these institutions are created, and is secured to the individuals employed in them by the judicial power alone; that is, the judicial power is the instrument employed by the government in administering this security.

That department has no will, in any case. If the sound construction of the act be that it

exempts the trade of the Bank, as being essential to the character of a machine necessary to the fiscal operations of the government, from the control of the States, Courts are as much bound to give it that construction as if the exemption had been established in express terms."

This language has but one meaning and that is that when it comes to the exemption from State taxation of instrumentalities of the Federal Government in order that they may be preserved from destruction, it is at last the judicial power which must determine whether or not the exemption exists by virtue of the nature of the instrumentality.

The authorities show

First. That many means used by Congress as instrumentalities of the Federal Government have been subjected to the power of State taxation because, in the opinion of this Court, such taxation did not interfere with their operations for the Government.

Second. That such exemption exists not by virtue of any declaration by Congress that the exemption should exist, but under the Constitution *ex proprio vigore*.

Third. That in the case of the National

Banks, Congress has expressly provided (R. S. 5219) for the taxation of the shares of stock and the bank's real estate exactly as MARSHALL held in *McCulloch v. Maryland* they could be taxed.

A short review of the cases will show they are all consistent with these principles.

Means and Instrumentalities of the State and Federal Governments respectively exempted from taxation by the other. (a) It has been held that the States cannot tax Government bonds or other direct obligations of the United States (*Weston v. City of Charleston*, 2 Pet. 449; *Bank v. Supervisors*, 7 Wall. 26); nor bonds issued by municipalities in the Territories established by Congress for the Government of the people before their admission as States (*Farmers' Bank v. Minn.*, 232 U. S. 516) or by the District of Columbia (*Grether v. Wright*, 75 F. R. 742, 753, *et seq.*); nor land owned by the United States, either when purchased in pursuance of a governmental function, or acquired as a part of its territorial domain by a treaty or otherwise (*Van Brocklin v. Tenn.*, 117 U. S. 151); nor the receipts from coal mines owned by the In-

dians but operated by private parties under a lease from the Government in pursuance of the Government's treaty obligations to apply the revenues from the mines to the education of Indian children (*Choctaw & Gulf v. Harrison*, 235 U. S. 292); nor the salary of a Federal official (*Dobbins v. Commissioners*, 16 Pet. 435); nor the necessary operation of a means adopted by the United States to execute its express powers (*McCulloch v. Maryland*, 4 Wheat. 316; *Williams v. Talladega*, 226 U. S. 404, 418, 419); nor the franchise of a corporation created by Congress. (*California v. Pacific R. R. Co.*, 127 U. S. 1); nor the tangible or intangible property (except real estate) of corporations organized primarily as instrumentalities of the Government. (*Owensboro National Bank v. Owensboro*, 173 U. S. 664.)

(b) Similarly, Congress cannot tax the bonds or obligations of a State or its municipal subdivisions (*Pollock v. Farmers Loan & Trust Co.*, 157 U. S. 429, 584; *Mercantile Bank v. New York*, 121 U. S. 138, 162); or the salary of a State official (*Collector v. Day*, 11 Wall. 113, 124), or municipal revenues (*U. S. v. Railroad Co.*, 17 Wall. 322).

The principle underlying all of the foregoing cases, is that neither the State nor Federal Government can tax the property or operations of any instrumentality used by the other as a means of executing its powers, subject to the qualification (a) that such agent's real estate can be taxed (in common with other realty) and (b) that its other property can also be taxed in those cases where the agency is engaged in private business, which private business is not essential to the performance of its governmental duties.

The States tax the property and operations of persons and corporations engaged in private business, although also employed by the Federal Government in the transaction of its business. Accordingly, it has been held that a State can tax checks drawn by the United States in the payment of its interest obligations, notwithstanding an attempted Congressional exemption of United States obligations from State taxation. (*Hibernia Savings Society v. San Francisco*, 200 U. S. 310); the personalty, credits, money, etc., of a railroad company chartered by Congress, financially assisted by it, and engaged in performing Fed-

eral services (*Thomson v. Railroad*, 9 Wall. 579; *Railroad Co. v. Peniston*, 18 Wall. 5, 30-35; *Union Pacific v. Lincoln County*, 1 Dill. 314); while it is a matter of common knowledge that the States can tax and do tax many species of property which are being used by agents of the United States as the means of executing powers of the Government, such as telegraph lines, dredges, manufacturing plants (*Gromer v. Standard Dredging Co.*, 224 U. S. 362; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382).

The reason why the States can tax the property and business of railroads, telegraph lines, etc., although they may have been chartered by Congress and used in part as governmental instrumentalities, and yet cannot similarly tax National Banks, lies in the following distinction between the two instrumentalities.

The railroads and telegraph lines could, in fact, perform all the services for the Federal Government just as well *without* the addition of private business, as they can with it (except as a money making proposition); and hence in accordance with the express language of *Os-*

*born v. Bank** the property and private operations of the companies are generally taxable by the State.

On the other hand, the banks, as pointed out in *McCulloch v. Maryland* and in the *Osborn* case, could only satisfactorily perform their Governmental duties by being endowed with the right to transact private business; as private banking business was the very thing which was needed to enable them to be an efficient machine for carrying out the money operations of the Government.

A Joint Stock Bank acting as a depository, could, like the railroads, perform such a function just as satisfactorily to the Government without, as with, the addition of private business. That is an additional reason why the Joint Stock Banks fall as depositories into the category of the railroads and not of that of the National Banks.

*The Court said (9 Wheat. 861) that there would be much difficulty in sustaining the private features of the Bank's charter "if it be as competent to the purposes of Government without as with this faculty" of transacting private business. But the Court held that the transaction of private business *was necessary* to the legitimate operations of the Government—not because it was more profitable to the Bank, but because the essential functions of the Government work could not be carried out so well, except in conjunction with private banking.

The mere possibility that at some future time the United States may elect to designate a Joint Stock Bank as a depositary and thereafter may further elect actually to use it as such, while in the meantime the corporation is engaged solely in private business for private gain, certainly does not constitute the corporation such an instrumentality of the Federal Government as to exempt it from State taxation.

In *Baltimore Ship Building Co. v. Baltimore*, 195 U. S. 375, 382, an old Government fort (of course not taxable) was conveyed to a shipbuilding company upon condition that it would construct a dry dock thereon, that the United States should have the right to use it forever free of charge, and that if its use as a dry dock was ever abandoned, the property should revert to the United States. It was held that the property was subject to State taxation, the Court saying:

"It would be a very harsh doctrine that would deny the right of the States to tax lands because of a *mere possibility* that they might lapse to the United States. * * * Finally, we are of opinion that the land is not exempt as an agency of the United States. * * * The United States has no present

right to the land but merely a personal claim against the corporation, reinforced by a condition. But, furthermore, it seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from State taxation either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. *Thomson v. Pacific Railroad*, 9 Wall. 579; *Railroad Company v. Peniston*, 18 Wall. 5."

The fact that the company is chartered by Congress is not material (*R. R. Co. v. Peniston*, 18 Wall. 5, at p. 34).

At the argument below, it was suggested that because the Joint Stock Banks were given the power to buy and sell United States bonds (a power that practically every individual and corporation, State or Federal possesses), they thereby became instrumentalities of the Federal Government and exempt from State taxation. If that argument were sound, would not every corporation and person who had the power to invest in or who invested in Government securities, be exempted with respect to the *balance of their business* from State taxation?

This argument was considered and answered

in *Monroe Savings Bank v. City of Rochester*, 37 N. Y., 365, 370, in the following language, quoted with approval in *Plummer v. Coler*, 178 U. S., 115, 123:

"It is, however, argued with great ingenuity and skill that, inasmuch as the plaintiffs, among other powers given them, have the right to invest their moneys in United States bonds, their franchises and privileges cannot be taxed by the State. The power thus to invest their money, it is contended, is a franchise for lending to the United States, and therefore cannot be taxed, because such taxation would trench on the power of the United States to borrow. This is stretching the argument too far. * * *

The position, that a franchise granted by the bounty of the State is not taxable, because coupled with that franchise is the privilege of loaning money to the general Government, is not more untenable than to argue that, because such a franchise enhances the credit of the United States, therefore the Legislature could not repeal the law granting the franchise without violating its constitutional obligation."

The farm mortgages executed to the Joint Stock Banks as well as the Farm Loan Banks issued by them thereon, and held by private investors are exclusively instruments of private business.

Can it be contended that they partake in the slightest measure of the characteristics of those properties which have been held to be instrumentalities of the Federal Government and hence exempt from State taxation?

The Farm Loan bonds are neither assets nor liabilities of the United States. It does not promise to pay or guarantee the payment of them. No suit could be brought in the Court of Claims upon them. The money raised on the bonds does not go to the Government.

Congress cannot, by its mere declaration, exempt property from State taxation. The exemption, when it exists, arises from the operation of the Constitution upon our dual system of Government. If the Government's argument is sound that the mortgages and bonds are Federal instrumentalities, and thus exempt from State taxation, there is nothing to prevent Congress from destroying the State Governments by successive measures to withdraw from the States all species of property from taxation. That this is a legitimate test of constitutional power, see *South Carolina v. United States*, 199 U. S., 437, 454-455, where it was the principal argument for not exempting whisky from Federal taxation.

Congress is now considering the creation of a similar system of Federal *building loan banks* for the purpose of furnishing money at low rates of interest and on long term mortgages, to enable people to buy and build homes;

The "indispensable essential of the system" being that "these bonds are to be tax exempt" "because the bonds can not be sold if they are to be subject to taxation," and "that will be doing no more than we did with the Federal Farm Loan Act with regard to mortgages taken by the Federal Land Banks," where "we called them instrumentalities of the Government." (See "Hearings before the Committee on Banking and Currency of the House of Representatives on H. R. 7597," pp. 7, 8.)

The advocates of the Bill avowed with perfect frankness (p. 11):

"The United States Government is not expected to put 50 cents into this system; they are not called upon to finance it in any way, shape or manner, excepting to the extent of providing a supervision that will see that the system functions properly. *And to provide for tax exemption of their securities*, and, as I said before, * * * to be perfectly frank about it, *we feel that the tax exemption is an essential element of the system*, and in that connection we are justified in making this comparison, that if the Congress of the

United States for any reason has seen fit to exempt the bonds of the Farm Loan System *for the purpose of giving easier and larger capital to the farmers* of the United States, we believe we are justified in calling attention to the fact that the *wage workers* of the cities, towns and villages of the United States
 * * * " (interrupted).

If the farmers and the home builders are entitled to get money at low rates of interest by exempting the loans and mortgages from State taxation, certainly the importance of manufactures, as shown in Alexander Hamilton's "Report on Manufactures" would fully justify Congress in providing a system of Federal Manufacturing Banks by which all mortgages and bonds on manufacturing establishments would be exempted from State taxation. This could readily be followed by a similar system with respect to irrigation projects, coal mines, logging, etc.; and if the Federal Government can exempt the bonds and mortgages from State taxation, can it not as readily exempt the land itself, for after all, in many States, a mortgage is an *interest* in land.

Again, if the Joint Stock Banks' possibility of performance of incidental Government duties, authorizes Congress to exempt its pri-

vate operations and assets from all taxation, then cannot Congress make *all* Banks potential depositaries, declare libraries the custodians of copyrighted books, department stores and drug stores agencies for the sale of War Savings Stamps, insurance companies agencies for the compilation of census statistics, and railroads, wagon roads, areoplane routes, etc., instrumentalities of interstate commerce and thus exempt from State taxation, everything connected with their private business profits.

Indeed, as a means for carrying into effect its express powers, Congress has already authorized steam railroads to carry Government troops, supplies, mails, etc.; has declared railroads, canals, etc., to be post roads; and has authorized State Banks and Trust Companies to act as both "depositaries" and "fiscal agents" of the Government in connection with the sale of Government bonds, certificates of indebtedness and War Savings Certificates. (See Second, Third and Fourth Liberty Bond Acts.)

Because State Banks and Trust Companies have been thus designated as depositaries and fiscal agents of the Government, and have in

fact served as such Government instrumentalities, can it be contended that Congress has the power to declare that all mortgages executed *to* such State institutions are Federal instrumentalities and exempt from State taxation; and that all collateral trust bonds issued *by* such State institutions (as vast numbers of them constantly do issue), are instrumentalities of the Federal Government and likewise exempt from State taxation?

It must be remembered that we are considering a question of *constitutional power*. If, as the Government now contends, Congress *has the power* to create a possible depository and fiscal agent and can declare its private business and all obligations executed to or issued by it, exempt from taxation, certainly the principle supporting such action, also authorizes Congress to designate individuals, firms and corporations as depositories and fiscal agents, and thereby exempt their private business from State taxation. There is no pretense that the private business of the Joint Stock Banks is (as in the *McCulloch* and *Osborn* cases), essential to the performance of governmental duties.

The shares of National Banks are exempt

from State taxation (unless permitted by Congress). If, then, these Joint Stock and Federal Land Banks are to be sustained on the principle of the National Banks, it would be within the control of Congress to exempt from State taxation the shares of stock in State corporations used as depositaries or fiscal agents, and also the property and business of firms and individuals similarly so employed.

For some years past State banks, trust companies, firms and private bankers have been the *means* by which Congress has collected income taxes at the source, thereby acting as important Federal instrumentalities in the execution of the express power of taxation. The income tax law requires all firms or corporations engaged in the business of collecting foreign payments of interest or dividends to be licensed by the Government and to withhold the income tax at the source. The fact that these persons were engaged in that foreign business made them peculiarly valuable as collecting instrumentalities of the Government's taxes. Could Congress have declared that mortgages executed by persons to such Banks, Trust Companies, firms or private

banking houses, were exempt from taxation and that all bonds issued by such institutions or persons were similarly exempt from taxation in the hands of third parties who purchased them as an investment?

THIRD POINT.

The Farm Loan Act, so far as it creates Federal Land Banks, is unconstitutional, for the same reasons advanced with respect to the Joint Stock Banks; and its constitutionality is not saved as an alleged exercise of the Congressional power (1) to appropriate money, or (2) to borrow money on the credit of the United States.

1. The argument as to Joint Stock Banks applies equally to the Federal Land Banks and need not be repeated, as the differences between the two classes of banks, as summarized in the margin, do not strengthen the constitutionality of the Federal Land Banks.

*The Federal Land Banks are restricted to loans (a) of not over \$10,000, and in their own district (b) to actual farmers for purposes of farm improvement, to buy a farm, or to refund a pre-existing mortgage, (c) which are the collective liability of the group of borrowers organizing each farm loan association; and the Farm Loan Bonds issued thereon are the joint liability of all twelve banks.

On the other hand, Federal Land Banks can receive

2. The Government's principal argument in support of the Federal Land Banks is one which could not be made on behalf of the Joint Stock Banks. It is based upon the express power to tax and the power implied therefrom to appropriate money, and arises from the fact that the Government temporarily subscribed for most of the capital stock of the Federal Land Banks after the general public had refused to take it.* Before dealing with that contention it will be desirable to consider the nature and extent of Congress' power to tax and, consequently, to appropriate money.

*Since then the Government's stock has been considerably retired, *while the private shareholders have increased until they hold more than double the value of the Government stock.* The aggregate capital stock is about \$20,000,000 of which the United States owns only about \$8,000,000.

deposits from their own stockholders, the farm loan associations, which is an imaginary rather than a real function, as the borrowers are not likely to be making deposits on which no interest can be paid. (§ 13, Clause Sixth.) The Secretary of the Treasury may make limited deposits "for the temporary use of any Federal Land Bank"; and temporarily the United States owns most of the capital stock, which is being automatically retired so that the borrowers will shortly own all the stock.

Like the Joint Stock Banks the funds for the operation of the banks are furnished by the general public purchasing the Farm Loan Bonds which are secured by farm mortgages.

Art. I, § 8, Clause 1, of the Constitution provides:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, *to pay the Debts and provide for the common Defense and general Welfare of the United States.*"

Although the subject of much discussion, it may be considered as settled that the italicized words did not confer on Congress any substantive power to provide for the country's general welfare, nor are they merely harmless introductory words limiting the subsequently enumerated powers.*

The accepted view is that Congress has power to lay and collect taxes *for the purpose of* paying the debts and providing for the common defense and general welfare, thereby

* (Federalist No. 41; Jefferson's "Opinion on the constitutionality of a National Bank," Feb'y 15, 1791; Jefferson's letter to Gallatin, June 16, 1817; Madison's veto of the Bonus Bill, March 3, 1817; Monroe's veto of the Cumberland Road Bill, and his "Views of the President of the United States on the subject of Internal Improvements" May 4, 1822; Madison's letter to Stevenson Nov. 17, 1830; 3 Farrand's Records of Federal Convention 483; Story on Constitution, §§ 907-930; 1 Willoughby on Constitution § 22; 1 Tucker on Constitution, §§ 222-223; 1 Hare's Am. Const. Law, 241-242; 1 Watson on Constitution 398; 10 Fed. Stat. Ann. 403 and authorities cited; *Van Brocklin v. Tennessee*, 117 U. S. 151, 158.)

qualifying the objects for which taxes may be laid.

Despite the powerful arguments of many statesmen, the views of Mr. HAMILTON, in his Report on Manufactures, have prevailed in actual practice, namely, that Congress can appropriate money raised by taxation for any purpose or object which it deems conducive to the *general* (as distinguished from *local*), welfare; and such action is almost, if not entirely, beyond the control of judicial power. While practically there are few, if any, limitations on the power of Congress to *appropriate* money, all the authorities are agreed that the power is exhausted upon the application of the money. Mr. HAMILTON, in his Report on Manufactures (December 5, 1791) said:

“It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money.*

* * * No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. *A power to appropriate money with this latitude, which is granted, too, in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication.*"

President MONROE, in his "Views of the President of the United States on the Subject of Internal Improvements" accompanying his veto of the Cumberland Road Bill (which is universally conceded to be the most thorough and elaborate view which has ever been taken of the subject of Congress' power to appropriate money) was of the opinion that Congress could appropriate money to any purpose which it deemed conducive to the general welfare, *but that it could go no further than to appropriate the money and could not undertake the projects to which the money was applied.*

After disposing adversely of Mr. MADISON'S contention that the power of appropriation was limited to the execution of the powers enumerated or implied therefrom, Mr. MON-

BOE said (II Messages and Papers of the Presidents, p. 167) :

"If, then, the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants according to a strict construction of their powers, respectively, is there *no limitation* to it? Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not."

He then argues that the money can be appropriated to any great national purpose including good roads, canals, foreign concerns, and says (p. 168) :

"The right of appropriation is nothing more than a right to apply the public money to this or that purpose. *It has no incidental power, nor does it draw after it any consequences of that kind.* All that Congress could do under it in the case of internal improvements would be to *appropriate* the money necessary to make them. For every act requiring legislative sanction or support, the State authority must be relied on. The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work when finished must be done by the State. To these purposes the powers of the

General Government are believed to be utterly incompetent."

In his accompanying veto message Mr. Mox-
NOE said:

"A power to establish turnpikes with gates and tolls, and to enforce the collection of tolls by penalties, *implies a power* to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the proprietor on a valuation and to pass laws for the protection of the road from injuries, and if it exist as to one road it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to legislate for the others. It is a complete right of jurisdiction and sovereignty for all the purposes of internal improvement, *and not merely the right of applying money under the power vested in Congress to make appropriations*, under which power, with the consent of the States through which this road passes, the work was originally commenced, and has been so far executed. I am of opinion that Congress do not possess this power; that the States individually cannot grant it, *for although they may assent to the appropriation of money within their limits for such purposes*, they can grant no power

of jurisdiction or sovereignty by special compacts with the United States. This power can be granted only by an amendment to the Constitution and in the mode prescribed by it."

ANDREW JACKSON, in vetoing the Maysville Road Bill, said with reference to the appropriation of money. (Id., p. 488):

"No aid can be derived from the intervention of corporations. The question regards the character of the work, not that of those by whom it is to be accomplished."

Mr. MADISON, in vetoing the Bonus Bill on March 3, 1817, said (Id., Vol. I, p. 584):

"A restriction of the power 'to provide for the common defense and general welfare' to cases which are to be provided for by the expenditure of money would still leave within the legislative power of Congress all the great and most important measures of Government, money being the ordinary and necessary means of carrying them into execution."

In 1 Willoughby on the Constitution, it is said (Sec. 269):

"In fact, however, the limitation that an appropriation should be for a public purpose has been without practical effect, as the courts have in no case attempted to hold invalid an appropriation by Congress on the

ground that it has been for a purpose not public in character; and, as regards the restriction that appropriations shall be in aid of enterprises which the Federal Government is empowered to undertake, the doctrine has become an established one that Congress may *appropriate* money in aid of matters which the Federal Government is *not* constitutionally able to administer and regulate."

In 1 Hare's American Constitutional Law, pages 241-250, there is an admirable review of the whole subject, including many of the historic instances involving the appropriation of money by Congress. He points out that the construction of railways, high roads, bridges and other internal improvements is derivable, *not* from the power to *appropriate money*, but from the war, postal and commerce powers. Referring to certain appropriations it is said:

"In the greater number of the instances above referred to, the government did not act in its sovereign capacity, *but like a rich and public-spirited individual who draws his pursestrings for the common good*; and therefore they do *not* tend to show that Congress may, by virtue of the eighth section of the first article, devise internal improvements and enact such laws as are necessary and proper to render the scheme effectual.

It is one thing to construct a highway by virtue of the power of eminent domain, and exercise an absolute jurisdiction over it when made, *and another to lay out a road through land acquired by purchase* with the consent of the state through which it passes. So Congress may well be entitled to *appropriate money* for public education, or even to build and endow colleges and schools, *and yet want the right to make attendance compulsory and enforce it by fines or penalties.*"

It is also said:

"IN OTHER WORDS, ALTHOUGH THE UNITED STATES MAY GO INTO THE MARKET AND DO WHATEVER CAN BE DONE BY THE USE OF MONEY WITHOUT THE EXERCISE OF LEGISLATIVE, EXECUTIVE, OR JUDICIAL POWER, THEY CANNOT, SPEAKING GENERALLY AND WHERE THERE ARE NO SPECIAL GROUNDS, DO MORE."

In Tucker on the Constitution, Vol. 2, §§ 222-234, there is elaborate consideration of the entire subject; and it is pointed out that if Congress, under the power of appropriation can supervise and intervene in the administration of the project to which the money is applied, our Government would be exercising a power not conferred upon it.

The extent of the power of appropriation has never been determined by this Court.

(*Field v. Clark*, 143 U. S., 649, 695; *U. S. v. Realty Co.*, 163 U. S., 427, 433.) But, for the purposes of this argument, we shall not question the right of Congress to appropriate public money to any purpose it may desire. We shall, however, insist that the implied power to appropriate for the general welfare is limited to the *disbursement* of money, with, at most, such machinery for its application to the desired end as may be used without the exercise of Federal power to abridge the rights of the States or the citizens thereof.

3. This brings us to consider

**THE GOVERNMENT'S ARGUMENT AS FORMULATED
BY HON. CHARLES E. HUGHES.**

The Government contends that Agriculture is a matter of national concern; that whatever tends to assist or to develop it contributes to the "general welfare"; that the lending of money to farmers at low interest rates is an aid to the Agricultural interests; and, therefore, that Congress can appropriate money in order to lend it to farmers at low rates of interest.

The same principle would, of course, support

gifts, or loans, to manufacturers, to miners, to wage earners, to the salaried class, to the aged poor, to the unemployed, or to those engaged in educating the youth of the land; and it is at least debatable whether such favors to a limited class of citizens are really an aid to the subject of which they are representatives, or are for the "general welfare."

However, assuming, without conceding, that under the power of appropriation Congress can give or lend the public money to any class it desires, the question involved on this appeal is *not* as to the public money appropriated, nor the investment thereof, nor the power of Congress to make appropriations through the creation of corporations. The question is whether Congress can *exempt* from State taxation and control,—not its own money so appropriated, *but the private capital of private investors loaned on farm mortgages as an ordinary business investment.*

The Government's argument is reducible to a series of propositions, each representing a supposed implied power of Congress claimed to be logically deducible from a preceding power, and is substantially as follows:

I. That the power of appropriation implies the right to select any proper means for making the appropriation effective; that the creation of corporations is a proper means; that the \$9,000,000 temporary subscription by Congress to the capital stock of such corporations is a legitimate means by which to lend public money to farmers at low rates of interest; that Congress can endow the corporation not merely with what is necessary to carry out the appropriation itself, but also with such private powers for private profit as Congress may deem it desirable to confer; that the corporations so formed are instrumentalities of the Federal government for carrying out Federal purposes; that, as such, neither the property nor the operations of such corporations can be taxed by the States; that all mortgages executed to, and all bonds issued by, such corporations, *and held by private investors*, are instrumentalities of the Federal government, and exempt from State taxation.

II. That under the power to borrow money, the Farm Loan Bonds are exempt from State taxation, notwithstanding the fact that they are neither assets nor liabilities of the United

States, are not issued on the credit of the United States, and that its interest in the capital stock of the federal land banks is only temporary, is being rapidly retired, and has already been far exceeded by the private capital recently subscribed to the banks.

We submit:

I. The implied power of appropriation does not authorize the creation of Federal Land Banks to lend private capital on farm mortgages, nor the exemption of its obligations in private hands from State taxation.

1. Never before in our constitutional history has it been suggested that the power to create a corporation could be deduced from the power of appropriating public money. The United States subscribed largely to the capital stock of both the First and Second Banks of the United States. But neither HAMILTON, WEBSTER nor MARSHALL suggested that the creation of the Bank could be sustained under the power of appropriation, which was then, as here, exercised by a subscription to the Bank's capital stock; although, in the case of both

Banks of the United States, the Government's subscription was absolute and permanent, whereas here it was *conditioned* on the public not subscribing for the stock, and *temporary*, as it is now in the process of rapid retirement. If the Government's argument were valid, would it not have occurred to some of those great minds?

The fact that the power of appropriation has never been relied on to support the authority of Congress to create a corporation, or to do anything not justifiable under some other grant of power, is persuasive evidence that the *power of appropriation* cannot authorize the creation of these corporations.

2. If a corporation is created to engage in any activity, whether it be the construction or operation of railroads, the manufacture of ordnance or explosives, the building of a merchant marine, the improvement of navigable rivers, or the business of banking, the implied power to create it must arise from some express power conferred upon Congress, such as to tax, to declare war, to regulate commerce, etc. Possibly the power to appropriate money can be exercised through the creation of a corporation *to carry out the appropriation*, but that

does not give the right to authorize the company to engage in forms of activity other than appropriating the public money, nor to afford a medium for the investment of purely private capital in private enterprises, such as farm mortgages.

If a corporation may be the means by which appropriated money is disbursed, surely it cannot be used for the purpose of enabling private individuals to lend their money to other private individuals. It will always be borne in mind that we are dealing strictly with the power of appropriation and not with those powers upon which the National Banking System was founded and for the beneficial accomplishment of which it was necessary to permit the banks to engage in private business. (See pages 31, 32, *supra*.) The power to create ordinary banks was not based on the power to appropriate money nor to provide for the general welfare, but was based upon the necessity of carrying on the fiscal operations of the government in exercise of its powers to tax, to declare war, etc. How can it be said that the creation of a corporation for the employment of private capital in the farm mortgage business is plainly adapted or really calculated to effect

the appropriation of the small amount of money which the government has subscribed to the capital stock?

In *McCulloch v. Maryland*, it was said, page 423:

"Should Congress under the pretext of executing its powers pass laws for the accomplishment of objects not intrusted to the Government it would become the painful duty of this tribunal * * * to say that such an act was not the law of the land."

Under the *pretext* of executing its power to appropriate money is not Congress seeking to create a machine by which one class of citizens can lend money to other citizens and be exempted from the operations of State laws with respect thereto? The money-lending business was never intrusted to the Government.

In *Osborn v. Bank*, 9 Wheat., 738, at 861, it was distinctly held that if the Bank could carry out the purposes of the Government as competently *without* the right to do private business, as it could *with* such right, there would be great difficulty in sustaining the private features of the charter. Certainly a corporation organized for the purpose of carrying out the *appropriation* of public money

could do so *without* the addition of the private business of farm mortgage lending.

3. Adopting the rule of *First National Bank v. Union Trust Co.*, 244 U. S., 416, 424, that the existence of the implied power to grant the function of private business must be tested, not by a separation of the different functions and by disregarding their relation to the bank as a whole, but by considering the bank as an entity, with all the functions and attributes conferred upon it, we find that the Federal Land Banks are agencies for the lending of money on farm mortgages; that the Government appropriated but a trifling amount; that private individuals have, within two years, contributed forty times that amount, and that in a short time the government's appropriation will have been returned to it, and the size of the private investment, now three hundred millions, will increase indefinitely, until it may reach the four billions now invested in farm mortgages.

4. Besides agriculture, there are many other subjects of national concern, such as the problems of personal morality; education of children, insurance of lives against death, disability and disease; the protection of property

from fire; the conservation of natural resources; the alleviation of poverty; and the relations between society and organized labor—all of them are matters of internal policy exclusively reserved to the States.

If Congress, under the power of appropriation, temporarily exercised to a limited amount, can create a great system of private money lending, let us consider to what extent the power may be carried.

Life and Fire Insurance. Certainly the protection of property against fire and lives against death is a matter affecting everyone. By a small temporary appropriation to capital stock, can Congress acquire the power to create gigantic life and fire insurance companies in which private capital can find investment, where the corporation will furnish money to persons suffering losses from fire or death, in return for low premium rates? Would all the immense capital thus invested, and the payments received from the members and the investments thereof be exempted from State taxation? Would payments made by the corporation for death and fire losses, also be exempted from taxation including inheritance taxes?

At the argument below the Government insisted that the Farm Loan Banks did not regulate any matter reserved to the States, but only related to the *application of money*. It will be observed that such an insurance corporation is purely a *financial* one, doing nothing except to *receive and disburse money*.

Conservation of natural resources. The conservation and development of coal, timber, water power, etc., are matters of great concern directly affecting the general welfare. Can Congress by small, temporary subscriptions to capital stock, authorize the creation of a "Conservation and Development Bank" to be engaged in the business of lending money at low rates to persons owning coal and timber lands, water power rights, etc., taking mortgages therefor and issuing its collateral bonds against them, which mortgages and bonds, as well as the huge private investment, shall be exempt from all State taxation? Could Congress, without appropriating any money, also authorize private capital to organize Joint Stock companies to engage in the same business, exempting the bonds and mortgages from taxation?

Irrigation of Arid Lands. The irrigation of arid lands is a public purpose (*Fellbrook Irrigation Dist. v. Bradley*, 164 U. S. 112; *Hauck v. Little River Dist.*, 239 U. S. 254). Could Congress, in order to stimulate the irrigation of arid lands (not public lands), authorize the creation of two classes of Irrigation Banks, one to which Congress would make a small temporary subscription for capital stock, and the other wholly organized by private individuals? And could it authorize those Banks to issue irrigation bonds secured by mortgages upon the proposed irrigated lands, which mortgages and the bonds should be exempt from State taxation? If so, what would become of the principles on which *Kansas v. Colorado*, 206 U. S. 46, 87-89, was based?

Education. Everyone will admit that education no less than agriculture is a matter of national concern and welfare. Could Congress, by a similar temporary appropriation for capital stock, authorize the creation of a corporation for the purpose of furnishing money to promote the cause of universal education, authorized to lend money at low rates to all persons building or operating school houses, colleges, technical or profession

schools, securing the money by mortgages on the plants and on the tuition fees of the students? Could Congress exempt such bonds and mortgages from State taxation? Could Congress have authorized Mr. Carnegie, Mr. Rockefeller and their associates to create a joint stock company with hundreds of millions of capital to be loaned or otherwise expended in assisting persons engaged in educational work and to withdraw from State taxation all such funds, together with the mortgages executed by the educators in return for the loans?

Child Labor. Congress cannot regulate child labor. (*Hammer v. Dagenhart*, 247 U. S. 251.) Can Congress, under the power of appropriation, create a corporation in which private capital would have the principal investment, for the purpose of discouraging child labor in factories, by lending money at low rates of interest to those factories who would refuse to employ child labor? Could Congress exempt from State taxation the loans thus made and the mortgages thus taken and the bonds issued against them? If so, the Congressional appropriation soon being returned to Congress (as the farm loan appropriation is being returned) we would shortly

have huge mortgage lending companies assisting factories all of whose operations and investments would be exempt from State taxation.

Suppression of Vice and Elimination of Venereal Disease. Congress has no power to suppress Houses of Ill Fame. (*Keller v. United States*, 213 U. S. 138.*)

Can Congress, by the same expedient of a trifling appropriation, permit Mr. Rockefeller and his associates to organize a corporation having for its object the suppression of vice and the elimination of venereal disease, by means of loans at low rates, or bounties paid, to immoral people in order to assist them in abandoning their vicious careers and getting a new start in life?

Would the capital thus invested, the loans taken from the unfortunate people, and the bonds issued thereon be exempted from State taxation?

Poverty and Unemployment. The development of the agricultural interests does not more greatly affect the general welfare nor is it a more important public purpose, than the

*Except, of course, under the war power. *McKinley v. United States*, 249 U. S. 297.

alleviation of poverty and unemployment. By the same system of appropriation, can Congress authorize philanthropists to organize corporations by which immense sums of private capital may be devoted to loans to the poor or unemployed, either without security or secured by chattel mortgages, assignments of salaries, or future earnings, etc? Could Congress exempt from State taxation the capital thus invested and the notes taken?

Public Disasters. In the case of a Chicago fire or a San Francisco earthquake Congress could doubtless (1) appropriate public money for the benefit of those whose property was destroyed, and (2) administer appropriate relief through the medium of a corporation whose capital was subscribed by the Government, but could it provide that private individuals (*a*) might take stock in the corporation, and (*b*) also organize an independent corporation wholly owned by such private individuals; and that the two corporations thus organized could lend money for the rebuilding of the destroyed districts, take mortgages therefor, issue collateral bonds against them, all of which should be exempted from State taxation?

We do not suggest any limitation upon the

power of Congress voluntarily to apply Federal money to the aid of any situation which Congress deems it wise to assist, but our criticism is that under that power of appropriation Congress cannot authorize private individuals to embark upon the same business and exempt them from the powers of the States, where such business bears no substantial relation to the execution of some Federal power.

II. The power to borrow money on the credit of the United States does not authorize the issuance and sale of Farm Loan Bonds to Private Investors, nor the exemption thereof from State taxation.

Congress has the power

"To borrow money on the credit of the United States."*

1. Farm Loan Bonds do not represent the exercise of any power by Congress to borrow money on the credit of the United States. Con-

*It is probable that money so borrowed can only be applied in the execution of the *enumerated powers* of Congress, and those *implied* therefrom; that *borrowed* money cannot be applied for the "general welfare," and, therefore, the *borrowing* clause cannot be relied on in order to furnish money for the general welfare. Furthermore, all money borrowed should first be placed in the treasury and then appropriated by law. (Constitution, Art. I, § 9, clause 7.)

gress has not borrowed the money. The money is not borrowed on the credit of the United States. No money realized from the sale of the bonds is placed in the United States Treasury. None of the proceeds belong in any way to the United States. The disposition thereof is not made by Congress but by the directors of the Federal Land Banks who are not public officials. Farm Loan Bonds are neither an asset nor a liability of the government.

Congress voted down an amendment to guarantee the bonds, which shows that it did not intend to be considered responsible therefor. (*United States v. Del. & Hudson R. R. Co.*, 213 U. S., 366, 414.) The Government disclaims any liability on the bonds (Farm Loan Primer, Ans. 102).

Mr. CARTER GLASS said in the debate that the Government "took a very limited temporary stake in the system"; that he did *not* consider the Farm Loan system a government "instrumentality"; and that he disagreed with Mr. Hughes' opinion that the Government was morally bound on the bonds.

2. Money obtained from private investors by the sale to them of bonds issued by the Federal Land Banks and secured by the farm

mortgages of private farmers, is not money borrowed on the credit of the United States; and is not an exercise of the Congressional power to borrow money.

In response to the Government's argument that the bonds were executed under the borrowing power because the Federal Land Banks were chartered by Congress and a portion of the stock therein was owned by the United States, it is sufficient to say:

(a) The argument is an example of reasoning in a circle because in one breath the validity of the bonds is based on the borrowing power *because* executed by a Federal corporation, and, next, the very *existence* of the Federal corporation is defended as a *means* for executing the borrowing power.

(b) Congress has chartered several railroads, but no one has ever suggested that their bonds were valid under the borrowing power of the Constitution.

(c) Although the Farm Loan Bonds are issued by banks in which the United States was temporarily the principal stockholders (is now a *minority* stockholder and soon will be *no* stockholder at all), they were issued solely by

the banks upon the faith and credit of the mortgages pledged to secure their payment, and of the joint and several liability of the various land banks, who, by statute, are expressly made liable for the payment of the bonds. The Government's ownership of stock in the banks does not make the act of the corporation that of the government. (*Briscoe v. Bank of Kentucky*, 11 Peters, 257; *Bank of the U. S. v. Planters' Bank*, 9 Wheat., 904, 907; *Woodruff v. Trapnall*, 10 How., 190, 205; *Curran v. Arkansas*, 15 How., 304, 308-9; *Bank of Kentucky v. Wister*, 2 Peters, 318, 322; *Louisville R. R. Co. v. Letson*, 2 How., 497, 550.)

In short, the temporary ownership by the United States of stock in the Federal Land Banks cannot make the acts of the banks, the acts of the United States. Even in the case of The First and Second Banks of the United States, in which the Government was a large stockholder, and which were incorporated solely for the purpose of carrying out the express powers of Congress, it was held that none of the privileges of the Government were imparted to the Bank, but that the Government by becoming a stockholder, laid down its sovereignty so far

as respects the transaction of the corporation.
(Bank of the United States v. Planters' Bank,
supra.)

(d) The power of the States over liquor and the liquor traffic is absolute.* When, in order to lessen the evils of intoxication, South Carolina took over the liquor traffic and prohibited all sales except those made by itself through a system of dispensaries, this Court held that the whiskey was still subject to a Federal tax, because when a State, even in the exercise of its police power, engages in ordinary private business, the business is not exempted from the Federal taxing power because it is conducted by a State; and that the exemption of State instrumentalities from Federal taxation is limited to those of a strictly governmental character, and does not extend to those used by the State in carrying on an ordinary private business.

It is not necessary to extend this brief by lengthy quotations from Mr. JUSTICE BREWER'S opinion, with which the court is perfectly familiar. It is sufficient to observe that he

**Bartmeyer v. Iowa*, 18 Wall., 129; *Beer Co. v. Mass.*, 97 U. S., 623; *Kidd v. Pearson*, 128 U. S., 1; *Crane v. Campbell*, 245 U. S., 304; *Barber v. Georgia*, 249 U. S., 254.

pointed out the large and growing movement in the country in favor of State management of public utilities, including gas, water, and railroads; that the States might take over tobacco, oleomargarine or all businesses, and that if, by doing so, it could exempt the subjects taken over, from Federal taxation, the National government would be crippled. The same argument applies here. If Congress can withdraw from State taxation the whole field of farm mortgages, it can do the same as to real estate, manufacturing plants, public utilities, mines, private residences, etc.

As pointed out by CHIEF JUSTICE MARSHALL in the *McCulloch* case, reaffirmed in the *South Carolina* case, this is not a case for confidence by one government that the other will not exercise its power of exemption to its fullest extent. The States are entitled here, and now, to insist that Congress shall not drive an entering wedge by exempting farm mortgages, and the private investments based thereon, from State taxation.

In *Flint v. Stone Tracy Co.*, 220 U. S., 171, 173, where it was held that the States could not

withdraw from the Federal taxing power, corporations of a public nature, it was said:

"It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred. The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character."

Certainly, it is no part of the essential governmental functions of the Federal government to provide farmers with money at interest rates lower than they can obtain in the open market. No matter what indirect benefit the public may derive from farmer prosperity, the companies conferring such prosperity are nevertheless private corporations whose business cannot be exempted from State taxation.

(e) The Farm Loan Act requires that an insignificant portion of the banks' capital (apparently 5 per cent of 25 per cent, *i. e.*, $1\frac{1}{4}$ per cent) shall be invested in United States bonds (Sec. 5). Obviously such a provision as to the capital stock affords no authority for the creation of the farm loan system and its exemption from State taxation.

(f) In this connection it must be remembered that the creation of the Joint Stock Banks cannot be based upon any ownership by the Government of its stock, or upon the exercise of the borrowing power, or upon any compulsory investment of its capital in Government bonds, because *none* of those elements exists with respect to the *Joint Stock* banks.

CONCLUSION.

In its last analysis, the questions to be determined are (1) whether the Constitution has endowed Congress with the power to provide for schemes of agricultural, social or industrial improvement calling for the use of large quantities of private capital; and (2) whether Congress, in its desire to see such schemes successfully realized, can infringe upon the

taxing power of the States by exempting therefrom the private capital so provided, thereby furnishing the desired scheme with money at a lower rate of interest, and on more favorable terms, than could otherwise have been secured.

If the principles announced in *Kansas v. Colorado* and *South Carolina v. United States* are still the law, it is inconceivable that Congress has the power to provide this system of farm mortgage banks, not for the purpose, as in the case of the National Banks or the old Bank of the United States, of carrying out some of the express powers of Congress, nor to enable Federal agencies adequately to perform their functions in view of the new forms of competition (*First National Bank v. Union Trust Co.*), but solely for the avowed purpose of enabling farmers to borrow money at low rates, because Congress thinks that people with capital *ought* to be willing to lend it on farm security, as cheaply as they lend it on, what the owners of the capital consider, a *safer* form of security.

Undoubtedly farmers have not been able to borrow money at as low rates as well established commercial interests, but this arises

from the very nature of the security offered by the farmers. In *Hammer v. Dagenhart* it was pointed out that the Constitution did not give Congress any authority to equalize economic conditions by which business done in one State was at a disadvantage compared with that done in another; so, Congress has no authority to equalize economic conditions, between two classes of citizens, with respect to the ability to borrow money from private sources.

If, in order to stimulate agriculture, Congress desires, under its power of appropriation, to lend the public money to farmers at a low rate of interest and easy terms, it is probable that the courts cannot control such action, but the ballot box would quickly stop it.

When, however, Congress, under the alleged guise of the power of appropriation, attempts to accomplish the same result through private capital, *at the expense of the taxing powers of the States*, then, in the language of *Hammer v. Dagenhart*:

“This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to discharge, harmoniously

with the other, the duties intrusted to it by the Constitution."

FRANK HAGERMAN,

WM. MARSHALL BULLITT,

Counsel for Appellant.

LOUISVILLE, KY., January 1, 1920.

APPENDIX.
— — —

The following extracts from the Reports of the Committees in Congress, the debates, and the Government's official announcements under the Act, all show that the sole and only purpose of the Act and object sought to be attained, were to give the farmers long-time loans on farm mortgages at *low* interest rates.

In introducing the bill originally, the Joint Committee reported as follows (53 Cong. Rec., 453, 489; 64th Cong., 1 Sess; Senate Report No. 144 and House Doc. No. 494):

“* * * This bill *enables the farmer to obtain capital* for productive purposes, *at low rates* and for long terms, on the security of his farm. * * *

The American Farmer does not come to Congress with a hard-luck story. He does not ask the Government to bestow on him the public money that all the people have contributed in taxes. He does not demand that the Government become a banker in order to borrow money on bonds and loan the proceeds to him. He merely calls attention to the fact that farming has become a business demanding large amounts of capital; he points out the undoubted excellence of the security he offers; and he demands legislation that shall put it in the power of those who are inter-

ested, and those who have money to invest, to extend to him the credit he requires. He desires the Government to authorize a system of land banks which shall duplicate for him the facilities now commanded by men engaged in manufacturing, in transportation, and in commerce. * * *

Of money seeking long-term investment at low rates there is an abundant supply. It includes the ordinary savings of the school-teacher, clerk, minister, and wage earner; the proceeds of life insurance in the hands of widows and other beneficiaries; funds belonging to estates, minors, and wards in chancery in the hands of executors, guardians, and trustees; funds of insurance companies, benevolent orders, and societies of various kinds; endowment of colleges, hospitals, museums, and other institutions; and assets to be invested by receivers, courts, and governments. The aggregate of these is enormous. They require an investment that is absolutely safe and reasonably liquid in the sense that it may be converted into cash upon moderate notice; in other words, that it may find a ready market. A safe investment of this character need not carry a high rate of interest. Here we discover the funds that should be made available to the farmer on long-term mortgage.

We may picture the owners of this vast wealth grouped on one side of a river, the farmers desiring loans grouped on the other

side. It is evident that each has what the other wants.

We are asked to furnish the bridge which shall bring them in touch, or rather to grant a franchise to those who will build the bridge if we will construct the approaches. *Such we conceive to be a proper function of the Government.* * * *

It is believed that the system of land banks outlined in the proposed bill affords a safe and attractive farm loan bond for the *investing public; low interest rates*, long term mortgages, and *easy payments* for the farmers; low cost of administration; simplicity of organization and operation; adaptability to the needs of every section; and stimulation to the spirit of generous co-operation among farmers."

The House Committee on Banking and Currency said (64th Cong. 1 Sess.; Report No. 630, p. 2):

"The *immediate purpose of this bill* is to afford those who are engaged in farming or who desire to engage in that occupation a vastly greater volume of land credit *on more favorable terms* and at *materially lower* and more nearly uniform *interest rates* than at present available."

"The means whereby this purpose is to be accomplished is provided through the establishment of national-chartered and Government-supervised organizations to grant long-time, amortizable loans at *low interest rates*

upon farm-mortgage security; to assemble in each organization individual farm mortgages into one collective security; and to issue upon this collective security credit instruments to be known as farm-loan bonds of such safety and soundness as to command the investment funds of the country in abundance." * * *

"In stating that the *immediate purpose* of the bill is to secure greater credit accommodation for the farmer the committee has had in mind the capital requirements of the farmer. Although the fact has been until recently almost entirely ignored, it is true that agriculture is a business as much as manufacturing or commerce is a business. With the rapid increase in population and the accompanying rapid rise in land value it has become more and more necessary that successful farming shall be conducted as a business. Modern agriculture needs and demands capital in constantly increasing volume." * * *

"A new form of credit instrument is created—the farm-loan bond. This bond is issued upon the capital of the land bank and the collective security of first mortgages. Every precaution has been taken to make it an absolutely safe form of investment. These bonds are sold to investors and the funds obtained are loaned to the farmer borrowers." * * *

"It is from the sale of Farm Loan Bonds that the Land Banks will be enabled to secure the funds to loan to the farmer."

In the course of the debate, Senator ROBINSON said, May 2, 1916 (53 Cong. Rec., 7228):

"The *primary purpose* of this legislation is to secure long time loans at *low rates of interest* to those, who, under the terms of the Act, may avail themselves of its provisions."

Senator CUMMINS said (Id., p. 7246):

"The *chief purpose* of the corporation as avowed by all who have spoken in its behalf, and, as I think will be admitted by everybody, is to secure a *lower rate of interest* to those who borrow from the Land Banks; *that is its only object.*"

The father of the bill, Senator HOLLIS, said (p. 6793):

"If I did not believe that the bill would give the farmer a *lower rate* than he is now getting, I should not think it would be worth while to pass the bill. It is because we feel the farmer is not now getting loans at as *low a rate* as he is entitled to that we are passing the bill. If it has that result, I shall feel that we have *achieved our object.*"

The Government's official announcements of the purpose and scope of the Act. The Farm Loan Act (§3) requires the Government to issue from time to time official publications "setting forth the principal features of this Act and * * * the merits and advantages of farm loan bonds."

Accordingly the Treasury Department has issued a number of circulars and reports from which the following extracts are taken.

Circular No. 1 (March 20, 1917):

"These associations are organized for the *primary purpose* of giving to each borrower the benefit of the combined credit of all its members to the extent of the capital contributed and the limited liability they each incur, and hence the associations are required to endorse every loan made to members."

Circular No. 2 (March 20, 1917):

"What the Farm Loan Act promises. *Farmers want cheaper money.* They ought to have it. The Federal Farm Loan Act aids them to get it. * * * The Federal Farm Loan Act *provides a way* of getting mortgage loans for farmers at *low rates* of interest, at lengths of time to suit the borrower and on *easy terms* of repayment. * * *"

Circular No. 3 (February 9, 1917):

"The law is a great new agency for furnishing money to finance the business of farming."

The Farm Loan Primer (p. 3):

"Q. What are the *general purposes* of the Federal Farm Act?

Ans. To *lower* and equalize interest rates on first mortgage farm loans; to provide long term loans with the privilege of repayment in installments through a long or short period

of years at the borrower's option; to assemble the farm credits of the Nation, to be used as security for money to be employed in farm development; to stimulate co-operative action among farmers; to *check land monopoly by making it easier for tenants to get land*; and to provide safe and sound long term investments for the thrifty."

First Annual Report of the Federal Farm Loan Board:

"* * * the Federal Farm Loan Act was enacted to create an institution which would furnish farmers with money at a *reasonable rate* and not be run on a profit producing basis" (p. 13).

"In order to provide capital for agricultural development at the *lowest possible rate of interest*, which was, of course, the *primary purpose* of the Act, it was essential," etc. (p. 17).

"The *general purpose* of the Act was to provide for the farm loan needs of the country" (22).

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FARM LOAN CASE.

In the Supreme Court of
the United States

October Term, 1920.

No. 199.

CHARLES E. SMITH, *Appellant*,

VS.

KANSAS CITY TITLE & TRUST COMPANY ET AL.,
Appellees.

*Appeal from the District Court of the United
States for the Western Division of the
Western District of Missouri.*

APPELLANT'S REVISED BRIEF.

WM. MARSHALL BULLITT,
FRANK HAGERMAN,
Solicitors for Appellant.

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In the Supreme Court of the United States

October Term, 1920.

No. 199.

CHARLES E. SMITH, *Appellant*,

vs.

KANSAS CITY TITLE & TRUST COMPANY ET AL.,
Appellees.

APPELLANT'S REVISED BRIEF.

STATEMENT.

1. The general nature of the case.

This is an appeal (Rec. 3) from a decree (Rec. 30) below dismissing a bill (Rec. 1-19) filed to test the constitutionality of the various provisions of the Federal Farm Loan Act of July 17, 1916, as amended on January 18, 1918 (8 Fed. Stat. Ann. Supp. 1918, pp. 14-42; 39 Stats. L. 360; 40 Stat. L. 431). The United States (Rec. 30, 31,

34) and the Federal Land Bank of Wichita, Kansas (Rec. 20, 30, 31, 34), and the First Joint Stock Land Bank of Chicago, Illinois (Rec. 19, 30, 31, 34), representing the *two* classes of banks named in the Act, all *voluntarily* became parties, took practical charge of the defense (Rec. 31) and are now here for the second time, as appellees, seeking to obtain a speedy decision *on the merits* of all questions raised as to the validity of said Act and its tax exemption features.

On January 8, 1920, the case was *on its merits*, orally and in print, fully argued by Ex-Justice Hughes for the Land Banks and by Ex-Attorney General Wickersham for the Joint Stock Banks. In the brief of the latter Ex-Secretary McAdoo joined. He also filed for the United States an additional elaborate printed argument on the merits, signed by him as a special assistant to the Attorney General of the United States. On April 26, 1920, the court, after having had the case under advisement for over three months, restored it to the docket for re-argument. Here, this brief for appellant is filed as a new and complete one and as a substitute for those heretofore presented by him.

2. The proceedings below and the appeal.

Appellant, plaintiff below, is a large stockholder in the appellee, defendant below, which is a corporation organized as a trust company under the laws of Missouri (Revised Statutes Missouri 1909, Chap. 12, Arts. I, II and III; Laws of Missouri 1915, pp. 103-127, amending same; sec. 127, subd.

11, p. 167; Laws Mo. 1915, pp. 165-167), which provide:

"Corporations may be created * * * for any one or more of the following purposes:
 * * * 11. To buy, *invest* in and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks or other *investment securities*."

A trust company is thereby authorized to *invest* its corporate and trust funds in such bonds as, in the eyes of the law, are *real* legal "investments," as distinguished from those which are unauthorized and pretended. The statutory power to deal in bonds is only "to buy, invest in and sell all kinds of government, state, municipal and *other* bonds and all kinds of negotiable and non-negotiable paper, stocks or *other* investment securities." These last words necessarily imply that any outlay of funds for securities which are not "investments" is illegal, unauthorized and *ultra vires*. So it was held by Circuit Judge Thayer in *Bierce v. Guardian Trust Company*, in an unreported opinion, a copy of which was attached to the brief on the first hearing, entitled "Appellant's Brief," as Part 1 of the Appendix, p. 81. Investments within this view do not, as he said, include bonds or stocks of any corporation which are of a speculative or other doubtful nature (17 A. & E. Enc. L., 2d Ed., 438, 440, 443, 444; *Lamar v. Micou*, 112 U. S. 452), and cannot be made in *illegal* bonds issued by an *illegal* organization under an unconstitutional statute (*id.*) be-

cause (*Norton v. Shelby Co.*, 118 U. S. 425) "an unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is in legal contemplation as inoperative as though it had never been passed."

If a corporate fiduciary, as defendant is, wished to make an investment in securities of such character, it might have absolutely protected itself by applying to and obtaining from a court specific directions in the premises, the courts "having large powers of supervision over the investment of funds held by fiduciaries" (17 A. & E. Enc. L., 2d Ed., 431). If appellee would not, in this way, even ask any relief, manifestly a good faith protesting stockholder can, in the absence of its *voluntary* action, have an injunction against a proposed improper and illegal venture. Such was the theory of the bill. The course of this case shows, and all interested therein, including appellees' eminent counsel, now concede the propriety thereof. In its most simplified form, the case presented was one where the directors of the corporate defendant, over the objections and protests of the stockholding plaintiff, proposed and threatened to *invest* its corporate and trust funds in bonds issued under the Farm Loan Act, *not only* by the Federal Land Banks, but *also* by the Joint Stock Land Banks. Thereupon plaintiff filed his bill (Rec. 1-18) to enjoin as illegal and *ultra vires* each proposed and threatened action. The claim was that the Act (8 Fed. Stat. Ann. Supp. 1918, pp. 14-42; 39 Stat. L. 360; 40 Stat. L. 431) and the tax exemption (secs. 21, 26) features thereof were un-

constitutional and, hence, the bonds of *neither* bank were *real* "investments." The case has grown into one of great proportions and of national importance. The government, as well as each of the defendant banks, recognized that *all* questions as to the validity of the Act authorizing the bonds and all tax exemption features thereof were thereby fairly and satisfactorily presented. They *voluntarily* came into the case, assumed charge of the defense, presented, *on the merits*, the sole constitutional question involved and convinced the court below that it should uphold (Opinion, Rec. 22-30) the Act. The bill, so as to more fully present the case, was, *at the suggestion of the Government and these banks*, in certain unnecessary respects, amended (Rec. 34) by interlineation. Thereupon defendant filed a motion to dismiss (Rec. 31) because, *as thus amended*, it did not state facts sufficient to constitute a cause of action. The United States, through Ex-Secretary McAdoo, to whose activities the friends of the Act owe so much, appeared (Rec. 30, 31, 33, 34) *amicus curiae*. Both banks, agencies established by the Act, upon their intervention (Rec. 19, 20, 30, 31, 34), became parties defendant. They and the United States were permitted (Rec. 31) to and did "adopt as their own and were heard upon the motion to dismiss." This motion was sustained and a decree (Rec. 30, 31) entered dismissing the cause. Thereupon an appeal (Rec. 31) was allowed and the case brought here (Rec. 32-36), where all formalities were waived. Upon stipulation (Rec. 33, 34) it was advanced and is now here for final presentation, where it should

be, without question, determined on its merits (*Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 9, 10; Argument, Div. I).

3. Questions involved are the validity of the Farm Loan Act and its tax exemption features.

The sole questions involved are whether that which, by its terms, is designated as the Farm Loan Act (39 Stat. L. 360; 40 Stat. L. 431), establishing *each* class of banks, and its sweeping tax exemption features (secs. 21, 26) are violative of some express or implied provision of the Constitution.

4. Genesis of the Act.

In 1913, a three months' European summer trip, commonly called a junket, was taken by a United States commission composed of Congressmen of one political faith, and by a number of delegates appointed by the Southern Commercial Congress, a voluntary convention or association of citizens. (64th Congress, Senate Document 500, p. 29.) The latter was headed by one David Lubin, who was described as a "delegate of the United States International Institute of Agriculture, Rome, Italy," whatever that may mean. In a speech before the Commission Mr. Lubin (63d Congress, 1st Session, Sen. Doc. 114, p. 4) declared that the members thereof and the delegates were "at the feet of the German people to learn." A propaganda was afterwards started in Congress for the establishment in this country of a system of

rural credits, based upon the German plan of collective and co-operative borrowing and lending of money on long-time farm mortgages. The words "German plan" are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany. Some modifications thereof have, however, been adopted and are in operation in other parts of Europe. It is quite significant that the plan is European, as the real question here is whether there *has, by Congress*, been enacted a law inimical to the spirit of our institutions, contrary to the provisions of our Constitution and in defiance of the reserved rights of the states and of the people. The commissions, ignoring the distinction between *federal* and *state* powers, confessedly, studied only European (not American) conditions and obtained a large amount of data about foreign methods. They came home enthusiastic about the German land mortgage scheme. Then followed extended public addresses, reports and discussions (63d Cong. 1st Sess., Sen. Docs. 17 and 214; 2d Sess., Sen. Docs. 261 and 380; 64th Cong. 1st Sess., House Doc. 494, House Rep. 630, Sen. Doc. 472; 64th Cong. 1st Sess., Sen. Doc. 9; 63d Cong. 1st Sess., Sen. Doc. 114; same session hearings on Rural Credits before House Sub. Com. of Com. on Banking and Currency and Joint Hearings on Rural Credits, before Subcommittees of Senate and House Committees on Banking and Currency). The most prominent characteristic thereof was the constant citation of German methods as an argument for our adoption of something of the same kind. A fair sample is found in an address (64th Cong.

1st Sess., Sen. Doc. 9, p. 21) of Senator Shepard, of Texas, before the Texas Farmers' Congress on August 3, 1915, devoted to a glorification of German methods, a plea for their imitation here, and an argument that the nearer the American people approach the German system, "the more successful we will be." Merely because the system is German or of foreign origin does not *necessarily* imply that it is illegal. There may or may not be some excellencies in all or any of the various European plans. Such plans may be adaptable to foreign conditions, where class discriminations may be made and the right of local authorities to control and tax private property may be denied. The real inquiry is whether they can be adopted, *not by the states*, but by the United States, where totally different conditions prevail and constitutional limitations exist. The Act was approved (39 Stat. L. 360) July 17, 1916. This, however, was *before the war*. Hence, no exercise of a war power is involved, and any such thought may be dismissed. The nearest the war got to the scheme was that the government, under the amendment of January 18, 1918 (40 Stat. L. 431), *temporarily* loaned, for its support, money presumably extracted from the people for war purposes. The *main* purpose of the Act was, in fact (Argument, Div. IV) and as a matter of law, not to appropriate public money (*id.*, Div. VI), or have performed any substantial governmental function (*id.* Div. V), but, as always has been claimed by its most ardent supporter (*id.* Div. IV), *solely* to give, by *private* means, the farm owners, *as distinguished from all others*,

money upon "easy terms," or, as put by the then Secretary of the Treasury, Mr. McAdoo, "long-term mortgages at *low* rates of interest," with a provision for repayment of the principal in annual installments, "so that the small *farmer* to the exclusion of all others, could borrow and pay off both principal and interest "through annual installments which will be less than the straight interest charges he has been paying on his mortgages under the old system." To find a ready market for these loans, wholly *private* in their nature, they and all the *private* capital invested therein were attempted to be wholly withdrawn from *all* state control and taxation. The organizations charged with the execution of the Act were merely commission loan agents, and in an attempt to accomplish the desired result, were glibly miscalled "*banks*" and "*instrumentalities of the government*." As this case presents the question whether, under our system of government, the law is valid, there must be herein a determination of, *not* what the agencies (Federal Land Banks or Joint Stock Land Banks) appointed to carry out the Act are called, *but what they really are*. Put in still more concise form, the real question, regardless of the use of mere words, is whether the *main* purpose of the establishment of these *alleged* banks was to have exercised the *governmental* power of the nation, as distinguished from those powers respecting *private and proprietary* rights, which, however and by whomsoever owned, arise solely out of and adhere in the ownership and control of *private* property.

5. Passage and theory of the Act.

(a) The advocates of the scheme and their adherents had framed and passed the Farm Loan Act. It was based upon and passed by Congress with the seeming thought that although the Tenth Amendment to the Constitution reserved to the states all the powers not granted to the United States (and none were so granted as to a Farm Loan Act), yet since *general* banking was a *governmental* function, there was *implied* the power to establish such agencies, *calling* them Federal Land Banks and Joint Stock Land Banks, just as had been *implied* the power to establish national banks.

(b) The lawmakers evidently overlooked the thought which prompts this appeal, that it was not permissible for them to organize an institution not "of a *governmental*," but mainly, if not entirely, "of a *private* character," ignore the difference between the scope and character of "*governmental*" and "*private* powers," and treat the latter as a wholly immaterial consideration. So, agencies were provided, the *main* purpose of which was to exercise merely private powers. They were *called* "banks" and "instrumentalities of the government," though nothing could have been further from the fact.

(c) Congress passed the Act, not as an appropriation, but on the alternative theory (Argument, Div. IV, subd. 2d) that either lending *private* money to farmers was "a proper function of government" (53 Cong. Rec. 453, 489), or that it was authorized so to do if, as Senator Cummins said

(53 Cong. Rec. 7246), *any* governmental functions, *no matter how "small or insignificant,"* were possible to be, *at any time*, performed by the agencies.

(d) The validity of the Act is, however, here, by counsel, sought to be (Argument, Div. III, subds. [a], [b]) upheld upon these two *conflicting* grounds: The Joint Stock Banks, through Ex-Secretary McAdoo and Ex-Attorney General Wickersham, contend that the agencies were created to perform governmental functions, and therefore the 'very power to create the government implied the power to create the agencies through which it was to function. The Land Banks, through Ex-Justice Hughes, practically contend that this theory is entirely wrong by claiming that the sole power is only found under the right of the government to appropriate public money for the general welfare of the people. Congress in passing the Act had no thought that such was the power which existed (Argument, Div. III). The doctrine is one that cannot be invoked in behalf of the Joint Stock Banks, for as to them there was no appropriation. No supporter of the Act thought that there was an exercise of the power to appropriate money. But *after* its passage an opinion of Ex-Justice Hughes was, by bond sellers, sought as to the validity of the Land Bank bonds. This opinion thus found the power, notwithstanding such position, if sustained destroyed the very existence of the Joint Stock Banks.

6. The substance of the Act, which was the attempted exercise by Congress of the power now challenged.

This case involves the sole question of the validity of the Farm Loan Act as amended (8 Fed. Stats. Ann. Supp. 1918, pp. 14-42; 39 Stat. L. 360; 40 Stat. L. 431), and its tax exemption features (secs. 21, 26) as applied to *both* the Land and Joint Stock Banks. The nature and character of the Act was, immediately after its passage, thoroughly dissected by students of the subject. Myron T. Herrick (119 Atlantic Monthly., p. 222, February, 1917), Charles A. Enslow (10 Lawyer and Banker, October, 1917, p. 402) and Allen Ripley Foote (The Injustice of the Federal Farm Loan Law, published by the American Progress Publishing Company, 145 East State Street, Columbus, Ohio) wrote articles of great force and interest. These may be consulted with profit. They not only explain the nature of the law, but conclusively show that the functions to be exercised by the newly created agencies were strictly *private*. They also show that there had been an *abortive* attempt to forever exempt from taxation Farm Loan bonds and mortgages, which attempt, if upheld, would deprive the states of those *internal* rights to which it has been here (Argument, Div. II) repeatedly decided they were justly entitled.

The *substance* of the Act is a scheme, the *main* purpose of which is to create, for borrowers and lenders, *private* corporate borrowing and lending *agencies*. In its most concrete form, the scheme

created and classified the agencies into corporations *called* Farm Associations, Land Banks and Joint Stock Banks. There was no limit either to the time of their existence or to the amount which could be loaned to borrowers on farm mortgages or to the bonds which could be issued and sold by the banks. The energies of these perpetual agencies were *exclusively* confined to lending on *farm* mortgages (1) through the Land Banks, with the aid of the Farm Associations, \$10,000 or less to actual cultivators of the soil, with which to buy or improve the land, and (2) through the Joint Stock Banks, without any aid of the Farm Associations, *unlimited* sums to *any* person for *any* purpose whatsoever. The *alleged* banks were, however, only such in *name*. They did (Bill, Rec. 10) and could do no banking business (secs. 13, 14, 16). They are, however, of such *distinct* kinds that the *separate* nature of each should be kept distinctly in mind.

(1) *Farm Associations and Land Banks.*

Each of any ten or more cultivators and owners of farm lands may mortgage same for not more than \$10,000, but *only to buy or improve them*. They must, however, *first* form a corporation, known as a Farm Association. This corporation, made up exclusively of borrowers, acts as a broker or commission agent ordinarily does, simply as a borrower's agency. In so doing, it indorses the paper of each borrower, thus, in a way, putting all borrowers behind each loan. Each borrower subscribes and pays for his stock in a sum equaling 5 per cent of the loan. This sum is

added to the mortgage and made part of the loan. The Farm Association must, however, apply to and obtain the money for the loan from a Land Bank, and, as a condition of so doing, must take and pay for exactly the same amount of the bank's stock. Thus the borrower in effect advances the capital of the Land Bank. The real parties to each loan are the borrower and the lender. They are, regardless of the agencies intervening, the only ones interested. One furnishes the money, the other pays it back with interest. In this the *public* has no concern, and the exercise of no *governmental* function is *essential*.

It is true that the *first* money to be loaned the borrowing farmers was obtained from the government by it subscribing and paying for about \$750,000 of each Land Bank's stock. While it was to so take the stock, it was to be repaid therefor without interest and it could receive no dividends thereon. Each transaction was, therefore, practically a government *temporary* loan, without interest. Moreover, this kind of a loan, though by the government, relates (Argument, Div. V, subd. 2d) to a *proprietary*, not a *governmental*, interest. As business justifies it, the *government* Land Bank stock must be taken over with the money paid in by future borrowers in payment of their Farm Association stock subscriptions. The Land Bank, out of the first moneys, thus *temporarily* loaned, acquires farm loans. It then can, and is expected to, raise forever *new* money for *future* investment by the sale of its own collateral trust bonds secured thereby. This is the extent of its office, and it is strictly a matter of

private concern, if there is a distinction (Argument, Div. V, subd. 4th) between one which is *private* and *proprietary* and one which is *governmental*. When the Farm Association has taken up the government's *temporary* loan, held in the form of Land Bank stock, the government's interest, in a scheme supposedly permanent, absolutely ceases. The borrowers then, through their Farm Associations, become sole owners of the agencies and step into absolute control thereof. From that time the government has not even a *proprietary* interest. Yet the agency remains as a fully chartered institution performing no office for the United States.

(2) *Joint Stock Banks.*

Abandoning all the subtle reasons advanced for the use of the Land Banks, Congress, as an evident after-thought, conceived the notion of having established Joint Stock Banks. Had these been provided for in the original framing of the bill, Land Banks and Farm Associations would have been unnecessary, and nine-tenths of it could have been dispensed with. The government has not the slightest connection with the Joint Stock Banks, and can never have any interest therein, nor in the mortgages taken or bonds issued by them. The Farm Associations are not connected therewith. Individuals, not necessarily borrowers, *only* can organize, own and control same. These *alleged* banks can, independently of the Farm Association, loan to *anyone* on farm lands, in *unlimited* amounts and without any restrictions as to the use made of the land or to be made of the

money borrowed thereon. The extent of their calling is to lend directly on *farm* mortgages and issue and sell their own bonds with the mortgages as collateral trust security.

(3) *Difference between the Land and Joint Stock Banks.*

Not only is there a difference between the Land and the Joint Stock Banks as to the ownership and control thereof, but, in the case of the Land Banks, the loans are made to *farm* occupants in *restricted* amounts and for *specific* purposes, while with the Joint Stock Banks there is no aid from the Farm Associations, and there are no restrictions as to amount, persons or purposes. While in this way non-cultivating farmers or even speculators can borrow on vacant land and on easy terms, the large investor really reaps the *greatest* benefit, for he, by a *private* investment of *private* funds, is permitted to go absolutely tax-free. This benefit can last *forever* and reach untold sums, for there is neither limit of time in the existence of the banks nor in the amount of money that can be loaned to borrowers or to the amount of bank bonds which can be issued. This feature caused a learned writer (119 Atlantic Monthly 222, 232, February, 1917) to remark that "Congress ought, at least, to have specified the total that could be made."

(4) *Inducements held out to investors.*

To induce investors to *continue* to furnish, after the temporary government loan, the money for the Land Bank and *start* into that of the Joint Stock

Bank, a *huge* price is paid, if tax exemption can be considered a "price," as it actually is. The securities are a valuable form of *private* taxable investment (*Farmers & Mechanics Savings Bank v. Minnesota*, 232 U. S. 516, 521). Yet they are entirely and forever withdrawn from the domain of the states and arbitrarily made exempt from any kind of taxation, state or federal, by simply, but falsely, calling them "instrumentalities of the government." This short method of depriving a state of its revenue, if carried far enough, can destroy the existence of any local government. The discrimination against borrowers, not owning farms, and in favor of *large* investors and *farm owners*, is unfair and really so harsh and arbitrary as to be against the spirit of American institutions.

(5) *Land Banks may possibly be designated as government depositaries.*

All Land Banks *may*, by the Secretary of the Treasury, *be designated* as depositaries of public money, excepting receipts from customs. They *may* also be employed as financial agents of the government (sec. 6). They must in these capacities perform only such reasonable duties as *may* be required of them. (*id.*) These are mere minor possibilities, and at most are incidents to, not the main purposes of, the scheme. As hereafter shown (Argument, Div. V, subd. 5th, 6th), this provision was adopted as a mere device and subterfuge. This is apparent, for it was, as stated by no less a personage than Senator Cummins (53 Cong. Rec. 7246) deemed "necessary,

however, to find *some* governmental purpose, however *slight or insignificant*, in order to invoke the authority of Congress in the incorporation." Neither kind of agency has been, as yet, designated as such a depository, nor, except in the specific instances about to be mentioned, been employed as such a financial agent. These exceptions are that during the summer of 1918 the Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the government for the *sole* purpose of making seed grain loans to drought-stricken farmers. The President, at the request of the Secretary of Agriculture, set aside, out of his \$100,000,000 of war funds, \$5,000,000 for that purpose. These three banks made upwards of fifteen thousand seed loans, aggregating \$4,500,000, all secured by crop liens. In making these loans, the three banks acted without compensation. This, under a joint circular of the Treasury and Agricultural Departments, which allowed actual expenses, but no more (Bill, Rec. 10).

(6) *Actual operations under the Act and government temporary aid authorized by and extended to Land Banks under the amendment of January 18, 1918.*

(a) Organized in 1916, the Board began active operations early in 1917. It is a matter of common knowledge that American investors looked upon the whole scheme as an invasion of the taxing power and control of the states, and as political, sectional, speculative, or as class legislation of a vicious nature. Anyhow, they would not buy the

farm loan bonds. In June, 1917, the Board, which to exist had to create a market, with the aid of a resourceful Secretary of the Treasury, made an agreement with a powerful New York banking syndicate to sell and the syndicate to buy, at par, fifty per cent of all the Land Bank bonds to be issued during the first six months, June 1 to November 30, 1917, with a provision that neither should, prior to 1918, sell any bonds to the public at less than 101½. The syndicate, in this indirect way, obtained from the public a commission of 1½ per cent for selling half of the six months' issue of bonds. This was but an expensive expedient to introduce the bonds on the market.

(b) The Land Banks were unable to sell any bonds directly to farmers having savings to invest, although this was the co-operative basis of the European acts. They were unable to sell them to ordinary investors, as predicted by the congressional advocates of the Act. They were unable to sell, even with the assistance of a great American banking syndicate, more than about one-half the amount provided for in the six months' syndicate contract. They were wholly unable to sell another bond after November, 1917, when that contract expired. A complete breakdown of the whole scheme was threatened. Thereupon, the constructive mind of the then Secretary of the Treasury again came to the front. The Act was, on January 18, 1918, amended so that he, upon request of the Board, could, out of any unappropriated public money, make *temporary* deposits, not in excess of \$6,000,000, in and for the *temporary* use of the Land Banks. In plain words, money was at that time

on hand and had been or could be easily raised from the sale of Liberty bonds. This was the money which could, in this way, be loaned to Land Banks. Any such bank receiving the deposit was required to issue a demand certificate of deposit bearing a rate of interest not exceeding the current rate charged for other government deposits and to secure same by farm loan bonds or other collateral. The Secretary was permitted, during the fiscal years of 1918 and 1919, up to \$100,000,000 per year, to likewise purchase farm loan bonds from Land Banks. Any such bank could, at any time, repurchase, on the same terms, the bonds so purchased, and, as to all such bonds as were held in the treasury, should upon demand do so, when one year elapsed after the end of the war. The original *temporary* organization of any Land Bank was required to be continued so long as any bonds so *temporarily* purchased should be held in the treasury and until the stock subscriptions made by the Farm Associations should equal the amount of stock held by the government (sec. 36, as amended January 18, 1918; 40 Stat. L. 431).

(c) Pursuant to the amendment, temporary deposits of large sums (Rec. 8) were made, for which two per cent certificates of deposit were issued. Of these there have been repaid (Rec. 8) large amounts. The Land Banks owned on September 30, 1919, \$4,230,805 of United States bonds, and the Joint Stock Banks \$3,287,503 thereof. The government temporarily took stock of the Land Banks aggregating \$8,892,130, and on July 1, 1919, held \$8,265,809 thereof. It purchased \$149,775,000 of Land Bank bonds. Of these, it held on

July 1, 1919, \$136,885,000. On September 30, 1919, the total issue of Land Bank bonds aggregated \$285,600,000. Of these, \$135,000,000 were held in the treasury under the amendment of January 18, 1918 (Bill, Rec. 9; Treasury Annual Reports, 1919, Finance, pp. 136-7).

(d) In addition to the Land Banks (*Supra*, par. [b]) twenty-seven of the Joint Stock Banks have been organized (Bill, Rec. 9; Appendix, Part 2, to the original Appellant's Brief, p. 91). Up to October 31, 1919, they had paid in \$7,812,050 of capital, issued \$46,225,000 of farm loan bonds, of which \$41,000,000 are still outstanding (Bill, Rec. 11; Report No. 317, Senate Bill No. 3109, Calendar No. 270, 66th Congress, 2d Session; Treasury Annual Reports 1919, Finance, 1089). So un-American are these latter institutions, and so unfair to the public is the withdrawal of large investments from taxation, that the Senate Committee on Currency and Banking favorably reported (Report No. 317; Appendix, Part 2, to Appellant's Brief on former hearing, p. 91) a bill (*id.* Appendix, Part 3, *id.* p. 94) to repeal for the future all tax exemptions of the loan bonds upon the ground "that the tax exemption privilege ought never have been extended," and "the accumulation of large aggregations of capital, wholly exempt from any and all forms of taxation, is wrong in principle and should be discontinued." The committee was of opinion (*id.*) that, "the large taxpayers will gradually absorb these bonds, which will contribute nothing to the support of the government."

(e) Large private investors, *to escape taxation through the exemptions*, have taken large quantities of bonds. This is manifest from the fact that *private* investors hold about \$150,000,000 (8 *supra*, subd. [6], par. [c] of the Land Bank and \$41,000,000 (*id.* par. [d]) of the Joint Stock Bank bonds.

(f) The value of the tax exemption to the rich is apparent. The Magazine of Wall Street of July 10, 1920, gives an apt illustration. It lists the \$26,050,430 holdings of the estate of Joseph R. DeLamar. The list shows "Federal Farm Loan 5's, \$3,105,000, upon which fact it is in the article observed:

"More than half of his municipal bonds consisted of Farm Loan 5's, as seen from Table II, evidently bought for their good yield combined with *tax exemption*."

(g) Bond buyers are ever on the alert to make money at the expense of the government, so they artfully suggest a trade of Liberty bonds for Farm Loan bonds. This abuse, rendered possible by an illegal Act, is illustrated by a cunning suggestion to buyers (an example of many repeatedly made) on a card of a reputable investment company. It reads:

"HOW TO MAKE YOUR LIBERTY BONDS EARN
FIVE PER CENT.

Many people of modest means bought liberally of the first issue of Liberty Bonds.

The succeeding issues earned a higher rate of interest so as to stimulate buying—but the citizen of modest means had bought his limit.

Today, those who have bought bonds and did not have an opportunity to exchange them to financial advantage, may secure a Government Bond bearing five per cent interest by exchanging Liberty Bonds of any issue at market price for Joint Land Bank bonds.

These bonds are instrumentalities of the United States Government, and are prepared and engraved by the Treasury Department. They are secured by Government approved first farm mortgages or by United States Government Bonds or Certificates of Indebtedness.

Joint Stock Land Bank bonds are exempt to the same degree as the Liberty Loan 3½'s—exempt from all taxes, except only inheritance taxes. This includes exemption from Federal Income Tax and local property taxes.

The value of exemption from Federal Income Taxes alone means added return, varying from 6½% to 18%—depending upon the amount invested.

These bonds are dated May 1st and November 1st of this year. They are redeemable at par and accrued interest on any interest date after five years from date of issue. Denominations \$500 and \$1,000.

We will be glad to explain the merit of the Land Bank issue without any obligation.

PEORIA COUNTY INVESTMENT CO.

508 Main St. Phone M. 6183 Peoria, Ill."

(h) The enormous value of the tax exemption was emphasized by the leading sellers of the Joint Stock Bank bonds, as shown by an advertisement in the New York Times of November 14, 1919. This appears as a frontispiece to the original brief

filed herein under the title "Brief for Appellant." It, among other things, recites:

"TAX EXEMPTION: These bonds are exempt to the same degree as the Liberty Loan 3½'s—in other words, they are exempt from all taxes excepting only inheritance taxes. This includes exemption from Federal Income Tax and local personal property taxes.

The value of the exemption from Federal Income Taxes alone, to individuals of large incomes, is indicated in the following figures, which would be further increased if the exemption of the bonds from other taxes were considered:

Net Yield of Joint Stock Bonds.		
	4½%	5%
	(To Optional Date)	(From Optional Date to Maturity)
Taxable Incomes.	Equivalent to	Equivalent to
\$ 50,000	6.52%	7.26%
80,000	8.33	9.25
100,000	10.22	11.36
200,000	12.60	13.89
500,000	15.52	17.24
1,000,000	16.07	17.86

The top line represents the net rate realized from Joint Stock Land Bank Bonds, regardless of the income of the holder. The remaining figures represent the gross rate which must be realized at varying incomes from taxable securities to procure the net rate at the top of the column."

ASSIGNMENTS OF ERROR.

The assignments of error (Rec. 33) are that the court below erred in:

1. Decreeing a dismissal of the bill.
2. Holding to be valid and constitutional the Farm Loan Act, and also the amendment thereof, approved January 18, 1918.
3. Holding to be valid and constitutional each of the sections 21, 26 and 27 of the Farm Loan Act of July 17, 1916.
4. Holding that defendant can lawfully invest in and purchase Land Bank bonds.
5. Holding that the defendant can lawfully invest in and purchase Joint Stock Bank bonds.

QUESTIONS IN THE CASE.

I. These proceedings are such that the validity of the law can and should be tested therein (Argument, Div. I, pp. 28-29).

II. There not having been expressly or by fair implication surrendered by the Constitution to Congress the power to create Land and Joint Stock Banks, such power must be deemed not to have been in it, but reserved to the states or to the people (Argument, Div. II, pp. 29-42).

III. Appellees radically differ in their contentions. Part of them, the Joint Stock Banks, represented by Ex-Secretary McAdoo and Ex-Attorney General Wickersham, claim that the power to pass the Act had by the people been surrendered to the United States where, as here, the purpose was to create agencies to perform governmental functions. Others, the Land Banks through Ex-Justice Hughes, claim such power was surrendered, not in such way, but by the inherent right of a government to appropriate its public money for any public purpose (Argument, Div. III, pp. 43-46).

IV. The Act was, as matter of fact, never intended to provide agencies, the main purpose of which was to perform necessary and essential governmental functions, nor to provide for a federal appropriation of public money (Argument, Div. IV, pp. 47-64).

V. The Act cannot, as contended by Ex-Secretary McAdoo and Ex-Attorney General Wickersham, be sustained on the theory of the Joint Stock Banks, that it was an exercise of the power to establish agencies to perform necessary and essential governmental functions (Argument, Div. V, pp. 64-90).

VI. The passage of the Act cannot, as contended for by the Land Banks, through Ex-Justice Hughes, be sustained as an exercise of the power to appropriate the public money for public purposes (Argument, Div. VI, pp. 90-119).

VII. The exemption from taxation is unwarranted (Argument, Div. VII, pp. 119-126).

VIII. Even if the Act and its tax exemption feature can be upheld as to the Land Banks, they cannot be sustained as to the Joint Stock Banks (Argument Div. VIII, pp. 126-136).

ARGUMENT.

I.

These proceedings are such that the validity of the law can and should be tested therein.

The circumstances which gave rise to and surrounded these proceedings, already narrated in minute detail (Statement, Div. 2), remove any possible doubt as to the propriety thereof to test the grave constitutional questions argued. *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 9, 10, is directly in point and a conclusive authority. There, in substance a similar proceeding, Mr. Chief Justice White significantly emphasized this thought:

"* * * the defendant corporation having called the attention of the government to the pendency of the cause and the nature of the controversy and its unwillingness to voluntarily refuse to comply with the Act assailed, the United States, as *amicus curiae*, has at bar been heard both orally and by brief for the purpose of sustaining the decree."

These observations can here be applied with even greater force, for the questions involved have, by every interest, been fully argued, both orally and in print. The propriety of the proceedings has never been questioned by either the complaining stockholder or corporate defendant (the original parties to the cause), the intervening Land and Joint Stock Banks (the two classes of banks

covered by the Act), the United States, which appears herein *amicus curiae*, or the eminent and experienced counsel who broadly sought below and heretofore and now again seek here to have determined the validity of the legislation.

These remarks, while probably unnecessary, are prompted by a passing inquiry of Mr. Justice McReynolds at the former hearing.

II.

There not having been expressly or by fair implication surrendered by the Constitution to Congress the power to create Land and Joint Stock Banks, such power must be deemed not to have been in it, but reserved to the states or to the people.

(a) The Tenth Amendment to the Constitution provides:

"Powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

To this simple provision effect has repeatedly been given and the rule is established that the power must be, by the Constitution, *expressly* granted or else be fairly implied from some other power which is actually expressed. In plain words, all powers were originally in the people. Such only as they, by the Constitution, *surrendered* to the United States exist in it. All others have been reserved to the states or to the people. This view is not in conflict, but fully accords, with

the general principle thus stated (*U. S. v. Harris*, 106 U. S. 629, 630, 636), by Mr. Justice Woods:

"While conceding this, it must nevertheless be stated that the government of the United States is one of delegated, limited and enumerated powers. * * * Therefore, every valid Act of Congress must find in the Constitution some warrant for its passage. * * * Mr. Justice Story, in his Commentaries on the Constitution, says: 'Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be *expressed* in the Constitution. If it be, the question is decided. If it be *not* expressed, the next inquiry must be, whether it is properly an *incident* to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress cannot exercise it.' * * *"

Mr. Justice Nelson expressed exactly the same thought when (*Collector v. Day*, 11 Wall. 113, 124) he said:

"The government of the United States therefore can *claim* no powers which are not granted to it by the Constitution, and the powers *actually* granted must be such as are *expressly* given or given by *necessary* implication."

This rule has been emphatically declared and enforced in the National Banking Cases (*M'Culloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738; *Bank v. Dearing*, 91 U. S. 29; *First National Bank v. Union Trust Co.*, 244 U. S. 416), and applied to such subjects as the reclama-

tion of arid lands (*Kansas v. Colorado*, 206 U. S. 46) and child labor (*Hammer v. Dagenhart*, 247 U. S. 251) and to many others of internal concern, as shown by repeated decisions here rendered: (*Chisholm v. Georgia*, 2 Dallas 419, 435; *Martin v. Hunter's Lessee*, 1 Wheat. 304, 325; *Dobbins v. Erie Co. Comrs.*, 16 Pet. 435; *Ableman v. Booth*, 21 How. 506, 521; *License Tax Cases*, 5 Wall. 462, 470; *Collector v. Day*, 11 Wall. 113, 124; *Slaughter House Cases*, 16 Wall. 36, 62; *U. S. v. Cruikshank*, 92 U. S. 542, 549; *Claflin v. Houseman*, 93 U. S. 130, 136, 137; *Leisy v. Hardin*, 135 U. S. 100, 127).

Mr. Justice Story, in *Martin v. Hunter's Lessee*, 1 Wheat. 304, 325, said:

"It is perfectly clear that the sovereign powers vested in the state governments, by their respective constitutions, remained unaltered and unimpaired, *except so far as they were granted to the government of the United States.*

These deductions do not rest upon general reasoning, plain and obvious as they seem to be. They have been positively recognized by one of the articles in amendment of the constitution, which declares that 'the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.'

The government, then, of the United States can *claim* no powers which are not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication."

Mr. Chief Justice Marshall, in *M'Culloch v. Maryland*, 4 Wheat. 316, 405, 410, said:

"This government is acknowledged by all to be one of *enumerated* powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. *That principle is now universally admitted.*

* * * * *

In America, the powers of sovereignty are divided between the government of the Union and those of the states. They are each sovereign, with respect to the objects committed to it, and *neither sovereign with respect to the objects committed to the other.*"

Mr. Justice Iredell, in *Chisholm v. Georgia*, 2 Dallas 419, 435, 448, said:

"Every state in the union in every instance where its sovereignty has not been delegated to the United States, I consider to be as completely sovereign, as the United States are in respect to the powers surrendered. The United States are sovereign as to all the powers of government *actually* surrendered. Each state in the Union is sovereign as to all the powers *reserved*. It must necessarily be so, because the United States have no claim to any authority but such as the states have *surrendered* to them. Of course, the part not *surrendered* must remain as it did before. * * * A state does not owe its origin to the government of the United States, in the highest or in any of its branches. It was in existence before it.

It derives its authority from the same pure and sacred source as itself. The voluntary and deliberate choice of the people."

Mr. Chief Justice Taney, in *Ableman v. Booth*, 21 How. 506, 516, said:

"The powers of the General Government, and of the state, although *both* exist and are exercised within the same territorial limits, are yet *separate* and *distinct* sovereignties, acting *separately* and *independently* of each other, within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a state judge or a state court, *as if the line of division was traced by landmarks and monuments visible to the eye.*"

Mr. Justice Nelson, in *Collector v. Day*, 11 Wall. 113, 124, said:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remained unaltered and unimpaired except so far as they were *granted* to the Government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the 10th article of the amendments, namely: 'The powers not delegated to the United States are reserved to the states, respectively, or to the people.' The Government of the United States, therefore, can *claim* no powers which are not granted to it by the Constitution, and the powers

actually granted must be such as are *expressly given, or given by necessary implication.*

The General Government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the *States within the limits of their powers not granted, or, in the language of the 10th Amendment, 'reserved,' are as independent of the General Government as that government within its sphere is independent of the States."*

Dobbins v. Erie County Commissioners, 16 Pet. 435, 447, asserts the same principle, while in *Van Brocklin v. Tennessee*, 117 U. S. 151, 178, the last of the foregoing italicized words of Mr. Justice Nelson were by Mr. Justice Gray quoted with approval.

Mr. Chief Justice Waite, in *United States v. Cruikshank*, 92 U. S. 542, 549, said:

"We have in our political system a Government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State, but his rights of citizenship under one of these governments will be different from those he has under the other. *Slaughter-House Cases*, 16 Wall. 74.

Citizens are the members of the political community to which they belong. They are

the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. In the formation of a government, the people may confer upon it such powers as they choose. The government, when so formed, may, and when called upon should, exercise all the powers it has for the protection of the rights of its citizens and the people within its jurisdiction; but it can exercise no other. *The duty of a government to afford protection is limited always by the power it possesses for that purpose.*

* * * Within the scope of its powers, as enumerated and defined, it is supreme and above the States; but beyond, it has no existence. It was erected for special purposes, and endowed with all the powers necessary for its own preservation and the accomplishment of the ends its people had in view. *It can neither grant nor secure to its citizens any right or privilege not expressly or by implication placed under its jurisdiction.*

The people of the United States resident within any State are subject to two governments; one State and the other National; *but there need be no conflict between the two. The powers which one possesses, the other does not.* They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad."

Mr. Justice Bradley, in *Claflin v. Houseman*, 93 U. S. 130, 136, said.

"Every citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the State; concurrent as to place and persons, though distinct as to subject matter * * *.

It is true, the sovereignties are distinct, and *neither can interfere with the proper jurisdiction of the other*, as was so clearly shown by Chief Justice Taney in the case of *Ableman v. Booth*, 21 How. 506."

Mr. Chief Justice Chase, of the internal commerce and the domestic trade of a state, *License Tax Cases*, 5 Wall. 462, 470, said:

"Over this commerce and trade Congress has no power of regulation, nor any direct control. This power belongs exclusively to the States. No interference by Congress with the business of citizens transacted within a State is warranted by the Constitution, except such as is *strictly incidental* to the exercise of powers *clearly granted* to the Legislature. *The power to authorize a business within a State is plainly repugnant to the exclusive power of the State over the same subject.*"

In making application of the principle to the police power, Mr. Justice Miller (*Slaughter-House Cases*, 16 Wall. 36, 62) said:

"This is called the police power; and it is declared by Chief Justice Shaw that it is much easier to perceive and realize the existence and sources of it than to mark its boundaries,

or prescribe limits to its exercise. *Com. v. Alger*, 7 Cush. 84. * * *

This power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. * * *

In *Gibbons v. Ogden*, 9 Wheat. 203, Chief Justice Marshall, speaking of inspection laws passed by the States, says: 'They form a portion of that immense mass of legislation which controls everything within the territory of a State not surrendered to the General Government—all which can be most advantageously administered by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of the State, and those which respect turnpike roads, ferries, etc., are component parts. No direct general power over these objects is granted to Congress; and consequently they remain subject to state legislation.

The exclusive authority of state legislation over this subject is strikingly illustrated in the case of *New York v. Miln*, 11 Pet. 102.
* * *

To the same purpose are the recent cases of *The License Tax*, 5 Wall. 471, and *United States v. Dewitt*, 9 Wall. 41."

So Mr. Justice Gray (*Leisy v. Hardin*, 135 U. S. 100, 127) of the same subject, said:

"By the Tenth Amendment, 'the powers not delegated to the United States by the Consti-

tution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

Among the powers thus reserved to the several States is what is commonly called the police power—that *inherent and necessary power, essential to the very existence of civil society, and the safeguard of the inhabitants of the State against disorder, disease, poverty and crime.*"

In Cooley's Constitutional Limitations (7th Ed.) 831, it is upon the same subject said:

"In the American constitutional system, the power to establish the ordinary regulations of police has been left to individual states, and it cannot be taken from them, either wholly or in part, and exercised under legislation of Congress. *Neither can the national government, through any of its departments or officers, assume any supervision of the police regulations of the States.* U. S. v. *Dewitt*, 9 Wall 41; U. S. v. *Reese*, 92 U. S. 214; U. S. v. *Cruikshank*, 92 U. S. 542; *Keller v. U. S.*, 213 U. S. 138."

From the principles thus established the language of Judge Cooley may be paraphrased by the conclusion that "in the American constitutional system the power to establish" *private* corporate agencies to do a *private* loan business "has been left to individual states, and it cannot be taken from them, either wholly or in part, and exercised under legislation of Congress."

(b) As the states are, by the Act, for an *unlimited* time deprived of their control of and their

taxing power over a valuable form and an *unlimited* amount of private investment (*Farmers & Mechanics Bank v. Minnesota*, 232 U. S. 516, 521), the question whether the power to pass such a law rested in the states or in the United States should be approached in the light of the foregoing principles recently and thus by Mr. Justice Day (*Hammer v. Dagenhart*, 247 U. S. 251, 255) accurately restated:

"In interpreting the Constitution it must never be forgotten that the nation is made up of states, to which are intrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved. (*Lane County v. Oregon*, 7 Wall. 71, 76.) The power of the states to regulate their purely *internal* affairs by such laws as seem wise to the local authority is *inherent*, and has never been surrendered to the general government. *New York v. Miln*, 11 Pet. 102, 139; *Slaughter House Cases*, 16 Wall. 36, 63, 64; *Kidd v. Pearson*, *supra*."

That the power to establish the agencies, like the Land and Joint Stock Banks, was *internal* and rested *exclusively* in the states is conclusively settled by *Kansas v. Colorado*, 206 U. S. 46, 87, 88, 90, 91. There it was decided that there could not, from the general welfare clause, or any *other* provision of the Constitution, be found or implied any power in Congress to reclaim arid land. No mere extract could do full justice to the opinion of Mr. Justice Brewer in that case. After declaring that

the United States was a government of enumerated powers, he, among other things, said:

"As heretofore stated, the constant declaration of this court from the beginning is that this government is one of enumerated powers. * * * Turning to the enumeration of the powers granted to Congress by the 8th section of the 1st article of the Constitution, it is enough to say that no one of them, by any implication, refers to the reclamation of arid lands. * * * But the proposition that there are legislative powers affecting the nation as a whole which belong to, although not expressed in, the grant of powers, is in direct conflict with the doctrine that this is a government of enumerated powers. That this is such a government clearly appears from the Constitution, independently of the Amendments, for otherwise there would be an instrument granting certain specified things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the 10th amendment. This Amendment, which was seemingly adopted with prescience of just such contention as the present, *disclosed the widespread fear that the national government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted.* With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if, in the future, further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. * * * The argument of counsel ignores the principal factor in this

article, to-wit, 'the people.' Its principal purpose was not the distribution of power between the United States and the states, but a reservation to the people of all powers not granted. The preamble of the Constitution declares who framed it, 'we the people of the United States,' not the people of one state, but the people of all the states; and article 10 reserves to the people of all the states the powers not delegated to the United States. The powers affecting the internal affairs of the states not granted to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, and all powers of a national character which are not delegated to the national government by the Constitution are reserved to the people of the United States. The people who adopted the Constitution knew that in the nature of things they could not foresee all the questions which might arise in the future, all the circumstances which might call for the exercise of further national powers than those granted to the United States, and, after making provision for an amendment to the Constitution by which any needed additional powers would be granted, they reserved to themselves all powers not so delegated. This article 10 is not to be shorn of its meaning by any narrow or technical construction, but is to be considered fairly and liberally, so as to give effect to its scope and meaning.

* * * This very matter of the reclamation of arid lands illustrates this: At the time of the adoption of the Constitution, within the known and conceded limits of the United States there were no large tracts of arid land, and nothing which called for any further action than that which might be taken by the

legislature of the state, in which any particular tract of such land was to be found; and the Constitution, therefore, makes no provision for a national control of the arid regions or their reclamation. But, as our national territory has been enlarged, we have within our borders extensive tracts of arid lands which ought to be reclaimed, and it may well be that no power is adequate for their reclamation other than that of the national government. But if no such power has been granted, none can be exercised."

If, as will be hereafter demonstrated (*Infra*, Div. V), the *main* functions to be exercised by the corporations authorized to be created, were *private* and not *governmental*, then, as Mr. Chief Justice Marshall (*Osborn v. Bank*, 9 Wheat. 738, 860), expressly stated, "it has never been supposed that *Congress* could create such a corporation." It would seem, therefore, that the principle established by these two decisions nullifies the force of the Act, and makes applicable the terse statement of Mr. Justice Day in the Child Labor case (*Hammer v. Dagenhart*, 247 U. S. 251, 255), that to sustain this statute "would sanction an invasion by the federal power of the control of a matter purely local in its character, and over which no authority has been delegated to Congress * * *." This certainly is true unless there was, by some *enumeration* in the Constitution, *surrendered* to the United States, the clear power to establish the Farm Loan System.

III.

Appellees radically differ in their contentions. Part of them, the Joint Stock Banks, represented by Ex-Secretary McAdoo and Ex-Attorney General Wickersham, claim that the power to pass the Act had by the people been surrendered to the United States where, as here, the purpose was to create agencies to perform governmental functions. Others, the Land Banks, through Ex-Justice Hughes, claim such power was surrendered, not in such way, but by the inherent right of a government to appropriate its public money for any public purpose.

Counsel for the appellees do not agree as to how or in what manner there was surrendered to Congress power to pass the Act. Their differences are radical.

(a) Ex-Secretary McAdoo and Ex-Attorney General Wickersham, in elaborate printed arguments, voice the view that the *power* to pass the Act is found in the doctrine of the National Bank Cases (*M'Culloch v. Maryland*, 4 Wheat. 416; *Osborn v. Bank*, 9 Wheat, 738; *Bank v. Dearing*, 91 U. S. 29; *First National Bank v. Union Trust Co.*, 244 U. S. 416), that the express duty of establishing and maintaining a government *implies* the power to establish, as part thereof, those agencies which perform *necessary* and *essential* governmental functions. Upon this theory *alone* Congress passed the Act (53 Cong. Rec. 453, 489, 64 Cong. 1 Session, Senate Report No. 144; House Doc. No. 494, 53 Cong. Rec. 7246). However, it

deemed it unimportant (53 Cong. Rec. 7246) that the governmental functions were slight and insignificant, and at most mere *possibilities* (Infra. Div. V, subd. 6th), provisions for which were inserted as a device and makeshift to make that constitutional which otherwise would be unconstitutional. This theory of these banks was, in 1918 and 1919, outlined by *widely* circulated printed opinions of these lawyers and several *other* leaders of the profession. Upon these opinions the Joint Stock Bank bonds were by bond-sellers offered, and upwards of \$41,000,000 sold to investors. These opinions appear in a government printed document of November 13, 1919, entitled:

"Amendment to Federal Farm Loan Act. Hearings before the Committee of Banking and Currency of the House of Representatives in H. R. 8159, a bill to amend the Act of Congress, approved July 17, 1916, known as the Federal Farm Loan Act to increase the limit of loans."

It is of significance that they all bear date more than a year *after* the opinion of Ex-Justice Hughes to the Land Banks, to which reference is about to be made, and which attempted to rest the validity of the Act on an entirely different *ground*, i. e., on the power to appropriate public money. Of course, power to issue Joint Stock Bank bonds could not be found in the right of Congress to appropriate public money, for no money was to be or was ever appropriated for such banks. Hence to sustain the Act as to them,

the right to pass it must be found in some power other than that of appropriation.

(b) Ex-Justice Hughes was by the Land (not the Joint Stock) Banks on May 4, 1917, *after the passage of the Act*, called upon for an opinion on the validity of the Land Bank bonds, and gave one to them that *their* bonds were valid on the *sole* ground that the Act was an exercise of the power to appropriate public money for the good of the public. This view does not appear from any published document to have been ever *before* advanced by any judge, lawyer or statesman. It is, however, herein, by him, sought to be here maintained in an elaborate printed argument, written *after* and in the light of the printed opinions of Ex-Secretary McAdoo and Ex-Attorney General Wickersham and the other lawyers who concurred with them. It must then be assumed that he rejects their views.

This opinion of Ex-Justice Hughes was printed, published by the Thomsen-Bryan-Ellis Co., of Baltimore, Washington, New York and Philadelphia, and given wide circulation. The title of the pamphlet in which it appeared, was:

"Federal Land Bank Bonds. Opinion of Former Supreme Court Justice Charles E. Hughes, confirming validity of the above bonds and their exemption from taxation."

In passing it may be repeated that if this view is sound, then, at least, so much of the Act as authorizes the establishment of the Joint Stock Banks is void because there was, as to them, no appropriation.

(c) These *opposing* views of counsel rest upon entirely *different* grounds and must, therefore, be given *separate* consideration. The claim of the Joint Stock Banks as presented by Ex-Secretary McAdoo, Ex-Attorney General Wickersham and the lawyers who joined with them, is considered in Division **IV** of this brief; that of Ex-Justice Hughes in Division **VI**.

It may, however, be remarked the House and Senate did not wholly agree as to where the power rested. Thus the joint House and Senate committee (53 Cong. Rec. 453, 489, 64 Cong. 1st Session, Senate Report No. 144; House Document No. 494) reported that *loaning* of *private* money to farmers was conceived "to be a *proper* function of the government." But on the floor of the Senate it was in debate (53 Cong. Rec. 7246) by Senator Cummins said:

"It is necessary, however, to *find* some governmental purpose, *however slight or insignificant*, in order to invoke the authority of Congress in the incorporation and *therefore* it is declared that these Land Banks *shall* be public depositaries."

The great senator was wrong in saying that it was provided that these banks "*shall* be public depositaries." All the Act says is that they *may* be so designated. There is some difference in a mandatory requirement and a remote possibility (*Infra*, Div. V, subd. 6th).

IV.

The Act was, as a matter of fact, never intended either to provide agencies, the main purpose of which was to perform necessary and essential governmental functions, nor to provide for a federal appropriation of public money.

That the Act was, as a matter of fact, never so intended is perfectly plain, for these reasons:

(1st) *The purpose was not to provide agencies which were in the main to perform essential and necessary governmental functions.*

(a) The House and Senate joint committee reported (53 Cong. Rec. 453, 489; 64th Cong. 1st Session, Senate Report 144; House Document No. 494, Report No. 630) that the *sole* purpose of the Act was the loaning of money to farmers—declaring that “such we conceive to be a proper function of the government.” In the Senate debate, Senator Cummins said (53 Cong. Rec. 7246) that to make the Act constitutional it was deemed necessary to add some provision “however small or insignificant” for the agencies created to perform some governmental function. This was done by section 6 hereafter (*Infra*, Div. V, subd. 6th) discussed. There can then be no doubt of the *real* purpose of the Act.

(b) If anything more is needed to be said as to this matter it may be remarked that it is at least plain that the purpose of the Act was not to provide agencies, the *main* functions of which were to assist the government in performing its *necessary* and *essential* duties. So it was by Charles A. Enslow (10 Lawyer and Banker, and Southern

Bench and Bar Review, October, 1917, p. 402) aptly said:

"The Federal Farm Loan Bank is nothing more nor less than a corporation chartered by the national government, and whose *sole* object is to secure from a certain class of people of the United States, money to be loaned to another class of people at a reduced interest rate. *It never was intended to be anything other than that.*"

The *real* and only purpose was to enable owners of farm land, not necessarily farmers, to borrow, for any purpose, money on farm mortgages for very long terms (in some instances up to fifty years) at extremely low rates of interest. This is clearly shown by its language as well as by the congressional debates (53 Cong. Rec. 6793, 6795, 6796, 6861, 6961, 6965, 6968, 7026, 7129, 7245, 7246, 7305, 7317) and by the governmental literature and official announcements (*Infra* subd. 2d). As correctly declared by Senator Cummins in debate (53 Cong. Rec. 7246), "the *chief* purpose is to secure a lower rate of interest to those who borrow; that is its *only* object."

The whole subject could here rest. If there is any disposition to further follow it, it may be stated that the history of the movement to establish in the United States a system of rural credits, based on the German plan of collective and co-operative borrowing and lending of money on long time farm mortgages, appears in *Agricultural Co-operation and Rural Credit in Europe* (1913) 63 Cong. 1st Session, Senate Doc. Nos. 17 and 214,

Parts I, II and III; *id.*, 2d Session, Report of the American Commission (1914), Senate Doc. No. 261, Parts I, II; *id.*, Report of the U. S. Commission on Agricultural Credit (1914) Senate Doc. No. 380; 64th Cong. 1st Session, Report of Joint Committee on Rural Credits (1916) House Doc. No. 494; *id.*, Report of Committee on Banking and Currency (1916) House Report No. 630; *id.*, Conference Report (1916) Senate Doc. 472; see also Rural Credits (1915) 64th Cong., 1st Session, Senate Doc. No. 9; 63d Cong. 1st Session (1913) Senate Doc. No. 114; Hearings before the Subcommittee of the Committee on Banking and Currency (H. R.) on Rural Credits (1913), and Joint Hearings before the Subcommittees of the Senate and House Committees on Banking and Currency on Rural Credits (1914).

The debates and committee reports may be resorted to, not to vary, limit or broaden the construction of the language, but to advise the court of the *intention* of Congress in order that such intention shall indicate the scope and purpose of the Act and the subject sought to be dealt with (*U. S. v. St. Paul M. & M. Ry. Co.*, 247 U. S. 310, 318, and cases cited; *McLean v. U. S.*, 226 U. S. 374, 380; *Standard Oil Co. v. U. S.*, 221 U. S. 1, 50).

(c) That the scheme was, in fact, *private* in its nature and not *governmental* is also apparent from every provision of the Act. It has, from the very first, been so recognized. Governor Herrick, *previous* to its passage, had given much thought to a Farm Loan System, writing such leading arti-

cles as *How to Finance the Farmer* (64 Cong. 1st Session, Sen. Doc. 396), *How to Finance the Farmer—Private Enterprise—Not State Aid* (1915, State Committee on Rural Credits and Co-operation, 920 Cuyahoga Building, Cleveland, Ohio), and *Rural Credits, Lands and Co-operation* (pamphlet). Immediately after the passage of the Act, he reviewed and condemned it (119 Atlantic Monthly, 222, 225, February, 1917) in a masterly article. In speaking of the demands of union labor for a like congressional scheme to aid in building homes for its members, he observed:

"However, the government must address itself to meeting these demands and difficulties, or else get out of the *private* business of lending money for agricultural purposes."

In the same article he quotes Ex-Secretary McAdoo as saying that the government will not

"stand for a proposition to lend money to *private* corporations or individuals upon the security of mortgage."

He also said (id. p. 223) this:

"Congressman Caraway of Arkansas was *one of the ardent advocates*, but in a speech in November before the Farm Mortgage Bankers' Association, he said: 'I do not believe in the government's going into *private* business of any kind, but this is one of the things it is going to do.'"

(d) In the case of the Joint Stock Banks, there is not even the flimsy pretense (which is claimed to exist in the case of the Land Banks) that the power of appropriation was exercised or that the money raised by the mortgages was to be used for agricultural development. There was for them no appropriation and there is *no limit or restriction whatever* as to the *purposes* for which the money loaned may be used, as those banks are expressly exempted from the limitations imposed upon Land Banks in that respect. Even the co-operative and collective plan of borrowing by the farmers, the joint and several liability of the banks, and the degree of federal supervision, which exist in the case of the Land Banks, were the strongest arguments advanced in Congress in favor of the Act. These were specifically *dispensed with* in the case of the Joint Stock Banks, because it was thought that some farmers might object to a co-operative undertaking with their neighbors, or to the publicity and scrutiny thereby entailed (Senate Rep. 144, p. 11; House Rep. 630, p. 910; 1st Annual Rep. of Federal Farm Loan Board, p. 22).

These banks are expressly prohibited from receiving deposits or doing any banking or other business (sec. 16). In Congress it was (64 Cong. 1st Sess. Senate Rep. 144, p. 11; House Doc. 494, p. 14, Report 630, p. 10) reported:

"Joint Stock Land Banks are not permitted to engage in *any* business but making farm mortgage loans and issuing bonds."

In the Farm Loan Primer, p. 15; Ed. July 23, 1918, it is stated:

"These Joint Stock Land Banks are private institutions intended for the investment of private capital."

The bill (Rec. 5) alleged, and the motion to dismiss (Rec. 11) conceded, that *private* persons as shareholders own and operate the Joint Stock Banks purely and *exclusively* for their own individual and *private* profit.

(e) But the functions of Land Banks are also purely *private*. The farm mortgages executed to both classes of banks and the bonds issued by them thereon, and held by *private* investors are wholly instruments of *private* business. They, like the Joint Stock Banks (section 16), can do no *banking* (section 14), and do not possess any of the characteristics of these institutions which have ever been held to be instrumentalities of the government. The bonds of both classes of banks are neither assets nor liabilities of the United States. It does not promise to pay or guarantee the payment of them. The money raised thereon does not go to it.

(2d) *Not only were the agencies intended to be strictly private, but there was a distinct purpose not to appropriate public money or lend it on the credit of the government.*

(a) The quotations, from the congressional debates and committee reports and the government official announcements, hereinafter set forth, all show that there was actually, no *real*

purpose to provide *necessary* and *essential* governmental agencies, nor to appropriate money nor lend any public credit. They do, however, affirmatively show, as Senator Cummins (53 Cong. Rec. 7246) stated, and the House Committee (64 Congress, 1st Session, Report No. 630) reported, that the *sole* and *only* object sought to be attained was to give the farmers long-time loans on farm mortgages at *low* interest rates.

In introducing the bill, the Joint Committee made this (53 Cong. Rec., 453, 489, 64th Cong., 1 Sess., Senate Report No. 144 and House Doc. No. 494) report:

"* * * This bill enables the farmer to obtain capital for productive purposes, at low rates and for long terms, on the security of his farm. * * * The American farmer does not come to congress with a hard-luck story. He does not ask the government to bestow on him the public money that all the people have contributed in taxes. He does not demand that the government become a banker in order to borrow money on bonds and loan the proceeds to him. He merely calls attention to the fact that farming has become a business demanding large amounts of capital; he points out the undoubted excellence of the security he offers; and he demands legislation that shall put it in the power of *those who are interested*, and those who have money to invest, to extend to him the credit he requires. He desires the government to authorize a system of land banks which shall duplicate for him the facilities now com-

manded by men engaged in manufacturing, in transportation, and in commerce. * * *

Of money seeking long-term investment at low rates there is an abundant supply. It includes the ordinary savings of the school teacher, clerk, minister and wage earner; the proceeds of life insurance in the hands of widows and other beneficiaries; funds belonging to estates, minors, and wards in chancery in the hands of executors, guardians, and trustees; funds of insurance companies, benevolent orders, and societies of various kinds; endowment of colleges, hospitals, museums, and other institutions; and assets to be invested by receivers, courts, and governments. The aggregate of these is enormous. They require an investment that is absolutely safe and reasonably liquid in the sense that it may be converted into cash upon moderate notice; in other words, that it may find a ready market. A safe investment of this character need not carry a high rate of interest. *Here we discover the funds that should be made available to the farmer on long-term mortgage.*

We may picture the owners of this vast wealth grouped on one side of a river, the farmers desiring loans grouped on the other side. It is evident that each has what the other wants. We are asked to furnish the bridge which shall bring them in touch, or rather to *grant a franchise to those who will build the bridge* if we will construct the approaches. *Such we conceive to be a proper function of the government.* * * *

It is believed that the system of land banks outlined in the proposed bill affords a safe and attractive farm loan bond for the *investing public; low interest rates, long*

term mortgages, and *easy payments* for the farmers; low cost of administration; simplicity of organization and operation; adaptability to the needs of every section; and stimulation to the spirit of generous co-operation among farmers."

The House Committee on Banking and Currency (64th Cong. 1 Sess., Report No. 630, p. 2) reported:

"The immediate purpose of this bill is to afford those who are engaged in farming or who desire to engage in that occupation a vastly greater volume of land credit *on more favorable terms* and at *materially lower* and more nearly uniform *interest rates* than at present available. The means whereby this purpose is to be accomplished is provided through the establishment of national chartered and government supervised organizations to grant long-time, amortizable loans at *low interest rates* upon farm mortgage security; to assemble in each organization individual farm mortgages into one collective security; and to issue upon this collective security credit instruments to be known as farm loan bonds of such safety and soundness as to command the investment funds of the country in abundance. * * * In stating that the *immediate purpose* of the bill is to secure greater credit accommodation for the farmer, the committee has had in mind the capital requirements of the farmer. Although the fact has been until recently almost entirely ignored, it is true that agriculture is a business as much as manufacturing or commerce is a business. With the rapid increase in population and

the accompanying rapid rise in land value it has become more and more necessary that successful farming shall be conducted as a business. Modern agriculture needs and demands capital in constantly increasing volume. * * * A new form of credit instrument is created—the farm loan bond. This bond is issued upon the capital of the land bank and the collective security of first mortgages. Every precaution has been taken to make it an absolutely safe form of investment. These bonds are sold to investors and the funds obtained are loaned to the farmer borrowers. * * * It is from the sale of Farm Loan Bonds that the Land Banks will be enabled to secure the funds to loan to the farmer.”

In the course of the debate, Senator Robinson on May 2, 1916 (53 Cong. Rec. 7228), said:

“The *primary purpose* of this legislation is to secure long time loans at *low rates of interest* to those who, under the terms of the act, may avail themselves of its provisions.”

Senator Cummins (id., p. 7246) said:

“The *chief purpose* of the corporation as avowed by all who have spoken in its behalf, and, as I think, will be admitted by everybody, is to secure a *lower rate of interest* to those who borrow from the Land Banks; *that is its only object.*”

Senator Hollis, who had charge of the bill (id., p. 6793), said:

“If I did not believe that the bill would give the farmer a *lower rate* than he is

now getting, I should not think it would be worth while to pass the bill. It is because we feel the farmer is not now getting loans at as *low a rate* as he is entitled to that we are passing the bill. If it has that result, I shall feel that we have *achieved our object.*"

The government's official announcements of the purpose and scope of the Act are equally plain. Thus the Act (sec. 3) requires to be issued from time to time *official* publications "setting forth the principal features of this Act and * * * the merits and advantages of farm loan bonds."

Accordingly the treasury department has issued a number of circulars and reports from which these extracts are taken:

Circular No. 1 (March 20, 1917):

"These associations are organized for the primary *purpose* of giving to each borrower the benefit of the combined credit of all its members to the extent of the capital contributed and the limited liability they each incur, and hence the associations are required to endorse every loan made to members."

Circular No. 2 (March 20, 1917):

"What the Farm Loan Act promises:
*"Farmers want cheaper money. They ought to have it. The Federal Farm Loan Act aids them to get it. * * ** The Federal Farm Loan Act *provides a way of getting mortgage loans for farmers at low rates of in-*

terest, at lengths of time to suit the borrower and on *easy terms* of repayment.
* * *

Circular No. 3 (February 9, 1917):

"The law is a great new agency for furnishing money to *finance the business of farming.*"

The Farm Loan Primer (p. 3):

"Q. What are the *general purposes* of the Federal Farm Act?

Ans. To *lower* and equalize interest rates on first mortgage farm loans; to provide long term loans with the privilege of repayment in installments through a long or short period of years at the borrower's option; to assemble the farm credits of the nation, to be used as security for money to be employed in farm development; to stimulate co-operative action among farmers; *to check land monopoly by making it easier for tenants to get land*; and to provide safe and sound long term investments for the thrifty."

The First Annual Report of the Federal Farm Loan Board (pp. 13, 17, 22) recites:

"* * * The Federal Farm Loan Act was enacted to create an institution which would furnish farmers with money at a *reasonable rate* and not be run on a profit producing basis. * * * In order to provide capital for agricultural development at the *lowest possible rate of interest*, which was, of course, the primary purpose of the Act, it was essential. * * * The *general purpose* of the act was to provide for the farm loan needs of the country."

(b) The entire scheme if justified, either as providing *necessary* governmental agencies, or as an appropriation, would be contrary to the view of the American Commission (63rd Cong. 2d Sess., Sen. Doc. 261, Part 1, p. 13), which reported:

"It is the opinion of the commission that our American problem of rural credit should be worked out *without government aid*. If there is not *private* capital in sufficient quantities, the only way the government can get the needed capital is either by *taxing all the people* in order to get capital for farming, or else by issuing bonds that sometime later must be *paid by all the people*. * * *

One of the great lessons learned in Europe is that in the long run the farmers succeed best when they help themselves. Whenever they become dependent on the government they keep looking to the government for more aid. It is believed to be a correct general statement that rural credit is on the strongest basis in those countries, where it has been developed most completely *without government aid*. Even granting the great importance of agriculture, it is *improper for all the people to be taxed in order to assist the prosperity of even a great class like the farming class*. Anything in the way of national favors or opportunities for borrowing money on land would be almost certain to encourage speculation in land. This would lead to still higher prices for land and still greater difficulty in getting the land into the hands of owners who till it. It is sometimes urged that the government should loan money directly to farmers at a very low rate of interest. * * * It is doubtful if it will

help the farmers in the long run if they are given special privileges. In other words, the government should help bring about a better system of rural credit by legislation, *but not by subsidy.*"

The United States Commission in its report to Congress (63d Cong. 2d Sess., Sen. Doc. 380, p. 22) said:

*"It is our opinion that such aid should not be extended in the United States. * * **

The idea of federal aid is always attractive and commands many able, earnest advocates; but self help should be the motto of our new agriculture. If given the opportunity, under liberal enactment of law, the savings of our nation will gladly invest in this safe field and relieve the federal treasury of any necessity to finance the project. It is wise legislation, rather than liberal appropriations or loans, which rural credit mostly needs at our hands."

President Wilson, entertaining the same view, in his first annual message of December 2, 1913, (119 Atlantic Monthly, February, 1917, p. 222) said:

"The farmers, of course, ask and should be given no special privilege, such as extending to them the credit of the government itself. What they need and should obtain is legislation which will make their own abundant and substantial credit resources available as a foundation for joint, concerted local action in their own behalf in getting capital they must use. It is to this we should now address ourselves."

The then Secretary of the Treasury McAdoo, in a ship subsidy speech before the Chamber of Commerce at Washington, on February 4, 1915, (119 Atlantic Monthly, February, 1917, p. 222) said:

"Yet, gentlemen, when we cannot get a state of the American Union to pay its just debts to the government for money loaned to it, you ask us to stand for a proposition to lend money to private corporations or individuals upon the security of mortgage. Never on the face of the earth! And I tell you, gentlemen, if you ever enter upon it, you will have to lend it upon railroads and upon every other enterprise. Bills are referred to me asking that every conceivable sort of scheme be approved, submitting them for the judgment of the department, for raids upon the United States Treasury in the form of actual loans to be made by the treasury of the United States on this thing and that thing—farm loans, loans on houses built by workingmen, and so on. They are all entitled to consideration if we are going into the money-lending business. We shall have to lend it to everybody. You cannot discriminate under our system of government. Everybody must tap the treasury till, if you adopt any such resolution as this."

The then Secretary of Agriculture Mr. Houston, (119 Atlantic Monthly, February, 1917, p. 222) in his annual report of 1914, said:

"The chief difference of opinion arises over whether there should be special aid furnished (to farmers) by the government. *There seems to be no emergency which re-*

quires or justifies government assistance to the farmers directly through the use of the government's cash or the government's credit. The American farmer is sturdy, independent, and self-reliant. He is not in the condition of serfdom or semi-serfdom in which were some of the European peoples to whom government aid was extended in some form or other during the last century. He is not in the condition of many of the Irish peasantry for whom encouragement and aid have been furnished through the land-purchase act. As a matter of fact, the American farmers are more prosperous than any other farming class in the world. As a class they are certainly as prosperous as any other great section of the people; as prosperous as the merchants, the teachers, the clerks, or mechanics. It is necessary only that the government provide machinery for the benefit of the agricultural classes, as satisfactory as that provided for any other class. It is the judgment of the best students of economic conditions here that there is needed to supplant existing agencies a proper land-mortgage banking system operating through private funds, just as other banking institutions operate, and this judgment is shared by the leaders of economic thought abroad."

At the expense of repetition there may here be emphasized the thought, that the Senate Committee on Banking and Currency and the Joint House and Senate Committee on Rural Credits in 1916 (64th Cong. 1st Sess., House Doc. 494, p. 6) reported:

"The American farmer does not come to Congress with a hard luck story. He does

not ask the government to bestow on him the public money that all the people have contributed for taxes. He does not demand that the government become a banker in order to borrow money on bonds and loan the proceeds to him. . . . He demands legislation that shall put it in the power of those who are interested and those who have money to invest to extend to him the credit he requires."

Upon these recommendations the Farm Loan Act was passed. The statements were so emphatic that a deep student of the subject (119 Atlantic Monthly, 222, 223, February, 1917) was led to say:

"All this is sound doctrine, and since it was thus deliberately pronounced as a rule of action for the administration by the foremost three of its leaders, nobody, of course, could have predicted the Federal Farm Loan Act. That such a law should really exist still seems incredible, not only because it violates every principle of this doctrine, but because it is unjustified by any emergency . . ."

(c) It would therefore seem impossible to conceive that Congress, in fact, ever intended to exercise either of the two *alleged* powers about the existence of which counsel so radically differ. The most of that intent seems to have been that the Joint Committee (64 Cong. 1 Sess., Report 630, p. 2) erroneously conceived the notion that the lending of cheap money to farmers was "a

proper function of the government," while the Senate (53 Cong. Rec. 7246) thought that the act could not be saved except by adding a "*slight or insignificant*" provision giving the government the *privilege*, if and when desired, of using the agencies created as government depositaries, a subject hereinafter more particularly noticed (*Infra*, Div. V, subd. 6th).

V.

The Act cannot, as contended by Ex-Secretary McAdoo and Ex-Attorney General Wickersham, be sustained on the theory of the Joint Stock Banks, that it was an exercise of the power to establish agencies to perform necessary and essential governmental functions.

As heretofore stated, counsel for the Joint Stock Banks erroneously *assume* that these agencies, like the national banks, exercise *necessary* and *essential governmental* functions to which any *private* function is a mere incident. Counsel for the Land Banks, by placing the power solely on the right of appropriation, reject this contention. Counsel for the Joint Stock Banks base their view upon their erroneous assumption. Unless the agencies are, in the main, *governmental*, the reason for the rule invoked by them ceases, and when the reason ceases, the rule of law based thereon loses its force.

(1st) *Reasoning upon which the proposition advanced rests and its inapplicability here.*

This view, inconsistent with that of Ex-Justice Hughes, rests upon the thought that, although the Tenth Amendment reserved to the states all the powers not granted to the United States, yet since *general* banking was a *governmental* function, as distinguished from that which was *private*, Congress had, as was decided in *M'Cullough v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738, 792, *Farmers' & Mechanics' National Bank v. Dearing*, 91 U. S. 29, and *First National Bank v. Union Trust Co.*, 244 U. S. 416, known as the National Bank Cases, the implied power to establish such banks, even though coupled therewith and as an *incident* thereto, *private* functions were also exercised. The evident reason a great lawyer, like Ex-Justice Hughes, does not rely upon so simple a proposition, is the difficulty in assuming here that the act ever created *banks* or agencies, the *main* purpose of which was to perform *governmental* functions. With the premise gone, the proposition must fall.

(2d) *The main function of the agencies created was to deal with and for private and proprietary interests, not to perform a governmental service.*

(a) Here arises the real question in the case. If the agencies established were not, in fact, *general* banks, or, regardless of what they were, if their *main* purpose was *not* to exercise *necessary* and *essential* *governmental* functions, to which *private* business was a mere incident, the

premise on which the proposition rests wholly fails. *South Carolina v. United States*, 199 U. S. 437, and the National Bank Cases, when properly applied, are conclusive authorities in support of this view.

The fact a lawyer like Ex-Justice Hughes finds the power to exist in the right of appropriation, not in the exercise of any *real* governmental function, is an argument which strongly condemns the position of the Joint Stock Banks. Congress found the *same* power to establish *both* Land and Joint Stock Banks. This is, at least, persuasive that the power attempted to be exercised was not that of appropriation, for no money was advanced to the latter. The mistake that Congress made was, however, in erroneously assuming (53 Cong. Rec. 7246) that it was sufficient if the act permitted the agencies, if and when called on, to exercise governmental powers, "however *slight or insignificant*," or that farm lending was (64 Cong. 1 Sess. Report No. 630, p. 2.) "a proper function of the government."

(b) "A mere *possibility*" that either of the alleged banks *might*, under section 6, be *unnecessarily* used in the future for some minor governmental purpose does not make it "an agency of the United States." This is conclusively settled by *Baltimore Ship Building Company v. Baltimore*, 195 U. S. 375, 382. Such an agency, in addition to being more than a *possibility* (*id.*), must have a "real or *substantial* connection" (Second Employers' Liability Cases, 223 U. S. 1) with the exercise of governmental functions. Other-

wise its existence, under *congressional* authority, cannot be justified. Moreover, the agency must be *necessary* and *essential* to aid the government in performing governmental duties, for, in *M'Cullough v. Maryland*, 4 Wheat. 316, Mr. Chief Justice Marshall remarked:

"A bank to the government is a convenient, a useful and *essential* instrument in the prosecution of its fiscal operations.
* * *

Later (*Osborn v. Bank*, 9 Wheat, 738, 863) he said that it must be

"* * * an instrument which is *necessary* and *proper* for carrying on the fiscal operations of government."

If the act does not measure up to these requirements, as it does not, it cannot stand. This precise question is settled by *M'Cullough v. Maryland* (4 Wheat. 316, 423), where Mr. Chief Justice Marshall said:

"Should Congress, under the pretext of *executing its powers*, pass laws for the accomplishment of objects *not* entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

So in *Osborn v. Bank*, 9 Wheat. 738, 860, 861, the same great jurist remarked:

"The bank is not considered as a *private* corporation, whose *principal* object is indi-

vidual trade, and individual profit; but as a public corporation, created for *public* and *national* purposes. That the mere business of banking is, in its own nature, a *private* business, and may be carried on by individuals or companies having no political connection with the government, is admitted; but the bank is not such an individual or company. It was not created for its *own* sake, or for *private* purposes. *It has never been supposed that Congress could create such a corporation.* * * * Why is it that Congress can incorporate or create a bank? * * * It is an instrument which is '*necessary and proper*' for carrying on the *fiscal operations of government.*"

In *Farmers' & Mechanics' Bank v. Dearing*, 91 U. S. 29, 33, Mr. Justice Swayne said:

"The national banks organized under the Act are instruments *designed* to be used to *aid the government* in the administration of an important branch of the *public service.*"

Mr. Chief Justice White, in *First National Bank v. Union Trust Co.*, 244 U. S. 416, 425, from a review of the National Bank Cases, concluded:

"What those cases established was that although a business was of a *private* nature and subject to state regulation, if it was of such a character as to cause it to be *incidental* to the *successful* discharge by a bank chartered by Congress of its *public* functions, it was competent for Congress to give the bank the power to exercise such *private* business in *co-operation with* or as *part of its public authority.*"

(c) It is manifest that the act, as an exercise of *governmental* power, cannot stand if the agencies organized to carry it out, whatever called, did not, in the *main*, exercise *necessary* and *essential* governmental functions, and not those strictly of a *private* character, nor those which were incidental, non-essential and unnecessary. There cannot be ignored the difference (*South Carolina v. United States*, 199 U. S. 437, 461, 463) between "the scope and character of * * * *governmental* and *private* powers." Congress could not (*Infra* subd. 5th), as it attempted, provide for a farm loan system by giving the *name* of banks to simple loan agencies, and *calling* them, regardless of their actual character, "instrumentalities of government." Otherwise, form could override substance. The claim of power must, therefore, rest on the fact that the act *really* established *general* banks, as it does not, or agencies, the *main* functions of which were *governmental*, and the *private* business to be done only an incident thereto. If the *main* functions of the agencies established were simply to perform *private* and *proprietary* acts, as distinguished from those which were *governmental*, and the latter were merely *possibilities* or *incidental* to the others, then no power existed.

The National Bank Cases rested upon this sole theory of the exercise of governmental functions. Banks, the power to establish which is implied, within the meaning of the rule of these cases, must be *real* banks which, in the *main*, perform real and substantial *governmental* functions. This

must be, not a mere incident to, but the *main*, not a *minor*, object of their existence. The exercise of *private* powers must come solely as an incident (*First National Bank v. Union Trust Co.*, 244 U. S. 416) to the *main* purpose. As it is with *incidents* to interstate commerce, there must be "a real or *substantial* connection with" the *main* public function (*Second Employers' Liability Cases*, 223 U. S. 1).

(3d) *The National Bank Cases*, when properly applied, sustain the contention of appellants.

(a) The First and Second Banks of the United States were in fact *the means actually used* by the government to carry on all its fiscal operations, obtain loans in anticipation of revenue, facilitate the payment of federal taxes, furnish a uniform and orderly currency on a sound specie basis, collect, safeguard and transport money, and transfer public funds from place to place (without cost to the government or loss to it on account of the difference in exchange) as the exigencies of the nation required. (*M'Culloch v. Maryland*, 4 Wheat. 316, 407, 409; *Osborn v. Bank*, 9 Wheat. 738, 861, 864; Beveridge's *Life of John Marshall*, Vol. 4, pp. 171, 176, 195; Holdsworth & Dewey's *First and Second Banks of the United States*; McMaster's *History of the People of the United States*, Vol. 2, p. 29; *id.*, Vol. 4, p. 280 *et seq.*; especially pp. 300-318; Hamilton's *Report on a National Bank.*)

The appropriateness, as well as the absolute necessity for the Second Bank of the United

States as a national agency, arose from the fact that there was utter chaos in banking, the government had been deprived of its almost indispensable fiscal agent (the First Bank of the United States), and could not negotiate loans, taxes were collected with great difficulty, loss and delay, and the Treasury was so near bankrupt that the Department of State did not have sufficient money to pay its stationery bill. In desperation, the Treasury exchanged six per cent government bonds for the notes of state banks, thereby losing \$5,000,000 from worthless bank bills. The local state banks became the sole depositaries for government funds. Their worthless currency flooded the country, interfering with commerce and all business, while the suspension of specie payments by them rendered a uniform national currency indispensable. (Lincoln's Veto Message of June 23, 1862, *Six Messages and Papers of the Presidents*, pp. 87, 88; Lincoln's Second Annual Message, Dec. 1, 1862; *id.*, pp. 126, 129-130; Rhodes' *History of the United States*, Vol. 4, pp. 237-239; Noyes' *History of the National Banking Currency*, p. 41; Davis' *The Origin of the National Banking System*, pp. 79, 80, 89, 106, 109; *Veazie Bank v. Fenno*, 8 Wall. 533, 536-539, 548.)

(b) The foregoing authorities also teach that the National Banking System was established, and was *in fact used* by the government, in order to furnish a sound and uniform currency and prevent injurious fluctuations thereof, facilitate the payment of troops, receive and distribute public subscriptions, provide a market for government bonds which were used as the basis of the notes

issued by the banks, and furnish convenient depositories for public funds. This at a time when every collector of federal taxes feared to deposit the money in state banks, was responsible for the funds collected and yet was compelled to hold it in his personal possession, subject to the danger of fire and accident, the government not even furnishing an office safe for that purpose.

(c) The reasons for the establishment of national banks to perform the necessary and essential *governmental* functions clearly show that neither the Land nor the Joint Stock Banks were created as agencies for such purposes. Unless they were, there is not authority in Congress to establish them (*Osborn v. Bank*, 9 Wheat. 738, 860). The fact that unnecessarily they *may* possibly, if and when desired, be called upon to perform a *minor* governmental function is not sufficient (*Infra*, subd. 6th). Banks are not unknown things. They are capable of being and have frequently been defined. The very definition, so far as concerns the exercise of a *governmental* function, is well understood. The agencies provided for, though so-called, were not banks at all. Their *main* purpose was intended to be and in fact was to do business of a *private* and *proprietary* character. The *governmental* functions, if any, were only *minor*, and unnecessary, and at most *incidental* to the *main* purpose. They were, by sections 13, 14 and 16 of the Act, *prohibited* from engaging in banking. Even without that specific prohibition, they never could be properly classed as *banks*. So say the authorities. (3 Encyclopedia of the United

States Supreme Court Reports, pp. 5-7; *Bank for Savings v. Collector*, 3 Wall. 495, 512; *Oulton v. Savings Institution*, 17 Wall. 109; *Warren v. Shook*, 91 U. S. 704; *Selden v. Equitable Trust Co.*, 94 U. S. 419; *Knickerbocker Life Ins. Co. v. Pendleton*, 115 U. S. 339; *Mercantile National Bank v. New York*, 121 U. S. 138, 156; *Guthrie v. Harkness*, 199 U. S. 148, 157). Whenever there is any kind of congressional power to establish banks, the plain meaning is that those established must be institutions, the *main*, not the minor, purpose of which is to exercise *governmental* functions. Coming still closer to this case, it may be said that agencies like Land and Joint Stock Banks, prohibited from doing a banking business (secs. 13, 14, 16), are not banks, the *main* purpose of which is to exercise *governmental* functions, for, as has been (*State v. Reid*, 125 Mo. 43, 52) even said, "the mere fact that a corporation is authorized to exercise ~~some~~ of the functions of a bank does not, in law and in fact, create it a bank within the meaning of * * * law."

In 3 Encyclopedia of the United States Supreme Court Reports, pp. 5-7, it is stated:

"And trust companies are not banks in the commercial sense of the word * * *. The business of the stock broker is ordinarily distinct from the business of a banker, or according to the common understanding, is not a banker."

In *Selden v. Equitable Trust Co.*, 94 U. S. 419, 423, a corporation which, exactly as the Land and Joint Stock Banks do, loaned its own money on

notes secured by mortgages and sold these securities with its guaranty, using the proceeds to make other loans, was held not to be a "bank," Mr. Justice Strong pointedly saying:

"The Equitable Trust Company lent its own money, taking bonds and mortgages therefor. Those bonds it sold with a guaranty. It sold only its own property, not that received from other owners for sale. Such a business, in our opinion, did not constitute the corporation a banker, as defined by the revenue laws."

In *Mercantile National Bank v. New York*, 121 U. S. 138, 159, Mr. Justice Matthews aptly put it:

"Trust companies * * * are not, in any proper sense of the word, banking institutions. * * * are not banks in the commercial sense of that word, and do not perform the functions of banks in carrying on the exchanges of commerce."

This doctrine was restated and applied in *Jenkins v. Neff*, 186 U. S. 230. In *Wells Fargo & Co. v. Railroad*, 23 Fed. Rep. 469, an express company did far more of the ordinary business done by a bank than can be done by a Land or Joint Stock Bank, yet it was, upon unanswerable reasoning, held not to be a bank. So, in a somewhat similar case, it was said as to a savings association (*State v. Louisiana Savings Co.*, 12 La. Ann. 568). Substantially, the same rulings (*Loan & Trust Co. v. Helmer*, 77 N. Y. 64; *Pratt v. Short*, 79 N. Y. 437; *People v. Railroad*, 12 Mich. 390; *State v.*

Gronville Alexandrian Society, 11 Ohio 1; *State v. Stebbins*, 1 Stewart (Ala.) 299; *State v. Reid*, 125 Mo. 43; *State ex inf. v. Lincoln Trust Co.*, 144 Mo. 562), have been applied to many other like corporations. Probably the best detailed and most extended review of the cases is found in *State v. Reid*, 125 Mo. 43, a careful reading of which will probably satisfy any inquiring mind that neither a Land nor a Joint Stock Bank is, in any sense, a bank, the main purpose of which is to perform some governmental function, and to which any private power exercised is a mere incident (*Osborn v. Bank*, 9 Wheat. 738, 860; *First National Bank v. Union Trust Co.*, 244 U. S. 416, 425). Such an agency has not "any real or substantial connection" (*Second Employers' Liability Cases*, 223 U. S. 1) with the exercise of any governmental function. Instead of the private powers being an incident to those which are governmental, the few minor governmental powers which are possible to be exercised are unreal, unsubstantial, unnecessary, non-obligatory, and merely incidental to the exercise of those which are strictly private and proprietary.

(4th) The fact that the government may have loaned or advanced money to either agency does not convert the functions of the latter from private to governmental.

(a) All the powers of a state or the United States are either governmental or else private and proprietary. These two classes of powers are well defined, quite distinct and fully recognized (*South Carolina v. United States*, 199 U. S. 437, 461, 462; *First National Bank v. Union Trust Co.*,

244 U. S. 416; *Illinois Trust & Savings Bank v. Arkansas City*, 76 Fed. Rep. 271, 282, 22 C. C. A. 171). In the South Carolina case (199 U. S. 437, 461, 463), Mr. Justice Brewer reviewed the decisions and concluded as to such powers there was a marked distinction between "those which are of a strictly *governmental* character," and "those which are used * * * in the carrying on of an ordinary *private* business." He then concluded:

"Now, if it be well established, as these authorities say, that there is a clear distinction as respects responsibility for negligence between the powers granted to a corporation for governmental purposes and those in aid of private business, a like distinction may be recognized when we are asked to limit the full power of imposing excises granted to the national government by an implied inability to impede or embarrass a state in the discharge of its functions. It is reasonable to hold that, while the former may do nothing by taxation in any form to prevent the full discharge by the latter of its governmental functions, yet, whenever a state engages in a business which is of a private nature, that business is not withdrawn from the taxing power of the nation."

The learned justice adopted, as applicable to the government, the distinction as to the *governmental* and *private* powers of a city. Of these, in the *Arkansas City* case (76 Fed. 271, 282, 22 C. C. A. 171), Judge Sanborn said:

"A city has two classes of powers—the one legislative, public, governmental, in the

exercise of which it is a sovereignty and governs its people; the other proprietary, quasi-private, conferred upon it, not for the purpose of governing its people, but for the private advantage of the inhabitants and of the city itself as a legal personality. In the exercise of the powers of the former class it is governed by the rule here invoked. In their exercise it is ruling its people and is bound to transmit its powers of government to its successive sets of officers unimpaired. But in the exercise of the powers of the latter class it is controlled by no such rule, because it is acting and contracting for the private benefit of itself and its inhabitants, and it may exercise the business powers conferred upon it in the same way, and in their exercise it is to be governed by the same rules that govern a private individual or corporation. * * * In contracting for water-works to supply itself and its inhabitants with water, the city is not exercising its governmental or legislative powers, but its business or proprietary powers. The purpose of such a contract is not to govern its inhabitants, but to obtain a private benefit for the city itself and its denizens."

In *Bank of United States v. Planters Bank*, 9 Wheat. 904, 907, 908, Mr. Chief Justice Marshall outlined the same view by saying:

"* * * when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level

with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. * * * As a member of a corporation, a government never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act.

The Government of the Union held shares in the Old Bank of the United States; but the privileges of the government were not imparted by that circumstance to the bank. * * * The government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter."

In *Flint v. Stone Tracey Co.*, 220 U. S. 107, 172, in denying an attempt by a state to withdraw from the federal taxing power, corporations of a public nature, Mr. Justice Day said:

"It is no part of the *essential* governmental functions of a state to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of *private* corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, *private* companies, whose business is prosecuted for *private* emolument and advantage. For the purpose of taxation they stand upon the same footing as other *private* corporations upon which special franchises have been conferred. The true distinction is between the attempted taxation of those operations of the

states *essential* to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a *private* character."

(b) It follows that the money which the government advanced to the Land Banks as a *loan* to make the initial stock payment, did not convert the scheme into one of a *governmental* nature.

(5th) *The fact that the agencies provided were actually named banks, or called instrumentalities of the government, does not prevent an inquiry into the unquestionable fact that they were not in reality such.*

This because mere words or forms cannot be used to evade a plain constitutional mandate. The calling of a corporation a bank, or an instrumentality of the government, when, in fact, it is not such, cannot justify the exercise of a power forbidden by the constitution. This is what Mr. Justice Harlan had in mind when he, in *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1, 27, said:

"This court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things. Such is an established rule of constitutional construction, as the adjudged cases abundantly show. * * * In *Mugler v. Kansas*, 123 U. S. 623, it was said that the courts, when determining whether a statute is consistent with the fundamental law, must not deem themselves 'bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are

under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority.’”

In the same case, Mr. Justice Holmes (p. 55) recognized the same principle by saying:

“I hardly can suppose that the provision is made any the worse by giving a bad reason for it or by calling it by a bad name. I quite agree that we must look through form to substance.”

In *Mugler v. Kansas*, 123 U. S. 623, 31 L. Ed. 205, 210, Mr. Justice Brewer had previously expressed the idea in these words:

“The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no *real* or *substantial* relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.”

The same principle has been so frequently announced in other cases that it may be said to be a settled doctrine of this court.

In *Henderson v. Wickham*, 92 U. S. 259, 268, 23 L. Ed. 543, 547, Mr. Justice Miller said:

"In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect; and if it is apparent that the object of this statute, as judged by that criterion, is to compel the owners of vessels to pay a sum of money for every passenger brought by them from a foreign shore and landed at the port of New York, it is as much a tax on passengers if collected from them, or a tax on the vessel or owners for the exercise of the right of landing their passengers in that city, as the statute held void in the Passenger Cases."

In *Robbins v. Taxing District*, 120 U. S. 489, 30 L. Ed. 694, 697, Mr. Justice Bradley remarked:

"The mere *calling* of the business of a drummer a privilege cannot make it so."

In *Smith v. St. L. & S. W. R. Co.*, 181 U. S. 247, 257, 45 L. yd. 847, 851, Mr. Justice McKenna said:

"Any pretence or masquerading will be disregarded and the true purpose of a statute ascertained."

In *Stockard v. Morgan*, 185 U. S. 27, 36, 46 L. Ed. 785, 794, Mr. Justice Peckham said:

"The fact that the state or the court may *call* the business of an individual, when employed by more than one person outside of the state to sell their merchandise upon a commission, a 'brokerage business,' gives no au-

thority to the state to tax such a business as complainants. *The name does not alter the character of the transaction*, nor prevent the tax thus laid from being a tax upon interstate commerce."

In *Reid v. Colorado*, 187 U. S. 137, 151, 47 L. Ed. 108, 115, Mr. Justice Harlan said:

"Certain principles are well settled by the former decisions of this court. One is that the purpose of a statute, in *whatever* language it may be framed, must be determined by its natural and reasonable effect."

In *Galveston H. & S. A. R. Co. v. Texas*, 210 U. S. 217, 227, 52 L. Ed. 1031, 1037, Mr. Justice Holmes said:

"Neither the state courts nor the legislatures, by giving the tax *a particular name or by the use of some form of words*, can take away our duty to consider its nature and effect. If it bears upon commerce among the states so directly as to amount to a regulation in a relatively immediate way, it will not be saved by *name or form*."

In *St. L. S. W. R. Co. v. Arkansas ex rel. Norwood*, 235 U. S. 350, 363, it was by Mr. Justice Pitney said:

"But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the *form* in which the taxing scheme is cast, nor upon the *characterization* of that scheme as adopted

by the state court. We must regard the *substance*, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state."

In *Mountain Timber Co. v. Washington*, 243 U. S. 219, 237, Mr. Justice Pitney said:

"The question whether a state law deprives a party of rights secured by the Federal Constitution depends not upon how it is *characterized*, but upon its practical operation and effect."

(6th) *The attempt by section 6 to provide for possible service to the government was a subterfuge and merely a scheme to evade the Constitution.*

(a) Notwithstanding the official pronouncements hereinbefore set out (*Supra*, subd. 2d), Congress went into that which has (*Atlantic Monthly*, 222, 225, February, 1917) been termed "the *private* business of lending money for agricultural purposes." The Joint House and Senate Committee found the power (53 Cong. Rec. 453, 489, Report No. 630, 64th Cong., 1st Session) to pass the act by conceiving the mere lending of money to farmers to be *governmental* in its nature. The Senate resorted to a mere pretense. Of this there is not a shadow of doubt. Some of the ablest senators opposed its passage in elaborate arguments (53d Cong. Rec., pp. 6961, 6965, 6968, 7245, 7246, 7305, 7317) well worthy of perusal. Senator Hollis, who had charge of the

bill, and many of its principal advocates had such grave doubts of its constitutionality that they openly admitted the necessity of adding to it (*id.*, pp. 6861, 7026, 7129, 7246, 7310) the minor *incidental* feature that the government should have the *non-essential* and *unnecessary* privilege (section 6) to use, *if* and when desired, the agencies created, as government depositaries and financial agencies. By adding such features, even in *optional* form and as a mere *possibility*, it was assumed (in the face of the principle established in *Baltimore Ship Building Co. v. Baltimore*, 195 U. S. 375, 382) that the agencies would, like the national banks, exercise banking or governmental powers. This notwithstanding that sections 13, 14 and 16 expressly provided that no one of them should "have power to transact any banking business," and that Joint Stock Banks should receive deposits from *no one* and Land Banks *only* "from its own stockholders." This plainly appears, for Senator Hollis, doubting the constitutionality of the proposed act, thus (53 Cong. Rec. 7026) called for help from his brother senators:

"MR. HOLLIS: The constitutional features of the bill have *given me great concern* * * *. The Democratic, Republican and Progressive platforms declared for rural credits. Therefore, we must do the best we can. If any friend of the bill can think of any other feature that should be added to it to make the bill *surely* constitutional, I would very gladly welcome it. I hope the senator from South Dakota and other friends of the measure will address themselves to that matter, and if they find anything further, will inform the Senate."

After hearing the *various* suggestions of many, Senator Cummins (53 Cong. Rec. 7246) came to the rescue of Senator Hollis with this suggestion:

"MR. CUMMINS: In this case, however, the *chief* purpose of the corporation, as avowed by all who have spoken on its behalf and as I think will be admitted by everybody, is to secure a lower rate of interest to those who borrow from the Land Banks; that is its *only* object. It is necessary, however, to find some governmental purpose, *however slight or insignificant*, in order to invoke the authority of Congress in the incorporation, and, therefore, it is declared that these land banks shall be public depositaries * * *."

(b) The mere right to designate the banks as government depositaries and financial agents is not the main purpose of the scheme, but, at most, was, if not a pure device, a mere minor incident thereto, wholly *unnecessary and non-essential*.

Section 6 of the act provides:

"That all Federal Land Banks and Joint Stock Land Banks organized under this act, *when designated for that purpose* by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may *also be employed* as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, *as may be required of them*. And the Secretary of the Treasury shall require of the Federal Land Banks and Joint Stock Land Banks thus

designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

This section is that "small or insignificant" provision which Senator Cummins (53 Cong. Rec. 7246) erroneously assumed would make valid that which otherwise would be unconstitutional. It was a makeshift, a pretense, and a mere subterfuge. It merits the condemnation thus pronounced (119 Atlantic Monthly 222, 231) by Governor Herrick:

"This combination of government finance and farm finance defies every construction of the Constitution save the broadest. Congress cannot exempt a corporation from the taxing powers of the states or of their political divisions, except for discharging a federal government function. Farm-mortgaging is not such a function. The framers of the system, however, declare that this will be its chief object, and they pretend that the land banks were authorized to be designated as depositaries and financial agencies of the government, and that their bonds and mortgages were made the government's instrumentalities, simply with the view of getting around constitutional objections. But the Supreme Court has said in regard to *subterfuges* of this kind and their use for a private corporation that 'The casual circumstance of its being employed

by the government in the transaction of its fiscal affairs would no more exempt its *private* business from the operation of that power (of the state to tax) than it would exempt the private business of any individual employed in the same manner.' Moreover, the court has even doubted that Congress has a right to establish or to privilege a company in any way 'having private trade and private profit for its great end and principal object,' or to delegate the power which it possesses under the Constitution 'to borrow money on the credit of the United States.' "

The quotations thus used by Governor Herrick were from *Osborn v. Bank*, 9 Wheat. 738, 859, 860.

(c) The section does not *require*, but only *permits*, the banks to be designated as depositaries of public money and their employment as financial agents of the government. They, in such capacities, are not *required* to perform duties. They are to perform only such as *may* be required of them. The law made no such designation nor any such requirement. Both agencies might *forever* exist without either of them ever being so designated or employed. All government funds, *if* deposited in any such depositary or financial agency, must be kept separate and apart from any other funds *and cannot be invested in farm mortgages or bonds*.

It is wholly immaterial that some artful mind may have suggested, as indicated by Senator Cummins (53 Cong. Rec. 7246), the insertion of this section to give to the scheme a color that *governmental* functions were to be performed. It is

sufficient to say they were not the *main* purpose of the scheme. If anything, they were *possibilities*, and if availed of, mere *incidents*, wholly *non-essential* and *unnecessary* to the *main* purpose. That *main* purpose was to obtain from *private* persons *private* money to loan for the *private* use of one class and the *private* gain of another.

(d) This view accords with the practical working of the Act. The bill (Rec. 10) avers that none of the *alleged banks*, Land or Joint Stock, has ever engaged in the banking business. It also avers that neither has been made a government depositary or financial agent, nor ever accepted any government deposits, *except that during the summer of 1918*, the Land Banks at Wichita, St. Paul and Spokane were *temporarily* designated as *financial agents* of the government for the *sole* purpose of making seed grain loans to drought-stricken farmers. The President, at the request of the Secretary of Agriculture, set aside, out of his \$100,000,000 of war funds, \$5,000,000 for that purpose. These three banks made upwards of fifteen thousand seed loans, aggregating \$4,500,000, all secured by crop liens. In making these loans, the three banks acted without compensation. This, under a joint circular of the Treasury and Agricultural Departments, which allowed actual expenses but no more (Bill, Rec. 10). No Joint Stock Bank was ever so used, even temporarily. This affirmatively shows that the section as to the agencies was wholly unnecessary and their designation, if ever made, wholly non-essential. It would seem to be absurd to say because of the mere *privilege* to so designate Land and Joint Stock

Banks the *main* purpose of the act was *governmental*. Moreover, to say that the *government* has this right, as a mere *privilege*, is to admit that neither bank is a *necessary* and *essential* governmental agency. The mere *possibility* that at some *future* time the United States *may* elect to designate a Land or Joint Stock Bank as a depository and thereafter *may further elect* actually to use it as such, while in the meantime the corporation is engaged solely in *private* business for *private* gain, certainly does not make it such a government instrumentality as will exempt it from state taxation, or authorize Congress to create it. *Baltimore Ship Building Co. v. Baltimore*, 195 U. S. 375, 382, is, in principle, *decisive*. There Mr. Justice Holmes, among other things, said:

"It would be a very harsh doctrine that would deny the right of the states to tax lands because of a *mere possibility* that they might lapse to the United States."

(e) The agencies did not become *governmental*, simply because they *might* be designated as *depositories* and *financial* agents. So many of such depositories existed that this permission, had the Act, instead of making it *possible*, *absolutely* named the *alleged* banks as such, would have been a *minor* matter and could not be said to have been its *main* purpose. The Treasury Annual Reports 1919, Finance 722, as to government depositories states:

"The Secretary of the Treasury determines the *number* of such depositories. The regular depositories receive and disburse the public

moneys, while the *special* depositaries hold only the moneys transferred from the Treasury. The number of national depositaries (*excluding special depositaries appointed under the Liberty Loan Acts*) at the close of the fiscal years 1918 and 1919 are here stated:

Depositaries	Regular	Special	Total
June 30, 1918.....	765	3624	3389
June 30, 1919.....	807	645	1452"

Again in the same volume (*id.*, p. 112), it is said:

"At the beginning of the fiscal year of 1919 there were 6,510 special depositaries and at the close of the year there were 9,550, of which 4,510 were national banks and 5,039 state banks and trust companies. Both national and state banks were designated as such depositaries in every state in the Union."

With so many depositaries already existing and ample power in a department merely for the asking to create more, it would be absurd to say that this permission given in section 6 was, in itself, so *essential* that it was the *main* feature of the act.

VI.

The passage of the Act cannot, as contended for by the Land Banks, through Ex-Justice Hughes, be sustained as an exercise of the power to appropriate the public money for public purposes.

One cannot be unmindful of the force of any view presented by such a lawyer as Ex-Justice

Hughes, nor ignore the importance thereof. He is himself an authority. It is, therefore, no light task to oppose him, especially when his position has been taken after thorough study. It might be different if the suggestion were made by someone less eminent.

(1st) *The question.*

(a) This contention is practically this:

Express provision is made in the constitution (Art. I, sec. 8, clause 1) that "Congress shall have power to levy and collect taxes * * * and provide for the common defense and general welfare of the United States." *Express* power being thus clearly given to levy and collect taxes, implies the power to spend the money collected. Agriculture is a matter of national concern. Whatever tends to assist or to develop it contributes to the "general welfare." The lending of money to farmers at low interest rates is a benefit to the agricultural interests. Hence Congress can "provide for the * * * general welfare" by appropriating money in order to lend it to farmers at such low rates.

This *same* principle, if sound, would permit the government to do *anything* deemed for the general good. It would support appropriations made for the benefit of manufacturers, miners, wage earners, the aged poor and unemployed, or to those engaged in educating the youth of the land. This, too, by the activities carried on by corporations, the *chief* purpose of which was to loan money in a *private* business in *unlimited* amounts for *unlimited periods* of time, even *after* the government's

advance had been returned to it. Such a use of the *general welfare* clause is in the face of *Kansas v. Colorado* (206 U. S. 46), which distinctly holds that the *power* must be found in some other clause before the states can be deprived of those *internal rights* (*Supra*, Div. II) otherwise expressly reserved to them by the Tenth Amendment. It is also against the doctrine of *Osborn v. Bank*, 9 Wheat. 739, 859, that Congress cannot under it create a bank, the functions of which are in the *main* of a private nature.

(b) Assuming, even if it be possible in a proper case for Congress, under the power of appropriation to give or lend the public money to any *class*, the question here involved is *not* as to any public money *appropriated*, nor the protection or investment thereof, nor the *possible* power of Congress to make appropriations and carry them out through corporations of its own creation. The real questions are, *first*, whether it can create and forever control *private* investment corporations doing, in the *main*, a *private business*, without limit in the amount of their investments or the period of their existence; *second*, exempt from state taxation, not the *public* money appropriated for their benefit or loaned to them, but *all* their corporate assets and all the *private* investments of *private* investors in their securities, and, *third*, then, even after the public money is exhausted or repaid, continue the ordinary *private* business of dealing, for a profit, in farm mortgages or bonds secured thereby.

(2d) *The view advanced is a wholly new discovery and differs entirely from that of Congress (Infra, subd. 3d), the courts (Infra, subd. 5th), the legal profession (Infra, pars. [b], [c]), the advocates of and sponsors for the Act (Infra, subd. 4th), and the principles upon which the National Bank Cases rest (Infra, subd. 5th).*

(a) The view advanced was at great length and with much vigor set forth in a printed opinion of Ex-Justice Hughes on May 4, 1917 (*Supra*, Div. II, subd. b), which was used by bond sellers in disposing of the Land Bank bonds. Long thereafter, in 1918 and 1919, Ex-Secretary McAdoo and Ex-Attorney General Wickersham and many other leading members of the profession declined to follow this opinion. They furnished (*Supra*, Div. III, subd. a) their own opinions to the sellers of Joint Stock Bank bonds. These found, and had to find, in order to sustain such bonds, the power to exist on the very different claim that Congress could provide and had provided for agencies to perform governmental functions. It is at least significant that these eminent counsel were at the time fully advised of the position of Ex-Justice Hughes, with which they did not agree.

(b) Never before in our history was it suggested that the power to create a corporation to do a private business could be deduced from the power to appropriate public money. The United States subscribed largely to the capital stock of both the First and Second Banks of the United States. But neither Alexander Hamilton, Daniel Web-

ster, nor Mr. Chief Justice Marshall suggested that the *congressional* creation of the bank could be sustained under the power of appropriation, which was then, as claimed here, exercised by a subscription to the bank's capital stock. With both Banks of the United States, the government's subscription was, however, absolute and *permanent*. Here it was *conditioned* on the public not *permanently* subscribing for the stock, but *temporarily* loaning some money, the advancements for which were to be returned and are now in the process of rapid retirement.

(c) Neither in the National Bank Cases (*M'Culloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 738; *Bank v. Dearing*, 91 U. S. 29; *First National Bank v. Union Trust Co.*, 244 U. S. 416) nor in the arid land case (*Kansas v. Colorado*, 206 U. S. 46), nor in the great cases concerning matters of *internal* concern (*Supra*, Div. II) was the thought ever advanced by any lawyer or justice that the power to establish and control the selected agencies to carry out a congressional act rested or could rest upon the right to appropriate *public* money.

(3d) *To so find the power would be contrary to the clear intent of Congress.*

(a) This is manifest from the simple fact that Congress assumed that *the same power* existed as to both classes of banks, though there was, and could be, no claim of an appropriation as to the Joint Stock Banks.

(b) In Congress the question of the constitutionality of the Act was thoroughly discussed (53

Cong. Rec. 6793, 6795, 6796, 6861, 7020, 7129, 7246, 7310) by lawyers of signal ability. No one of them ever entertained the thought that the act could be justified as an exercise of the power of appropriation.

(c) Upon the other hand, Congress justified it on the entirely *different* ground that it was to provide agencies, the functions of which were governmental.

There was never the slightest intention to make an appropriation. The Joint Committee of the Senate and House recommended the passage of the Act (55 Cong. Rec. 453, 489, 64 Cong., 1st Session, Report No. 630; Senate Report No. 144; House Document No. 494) because it was *conceived* that lending to farmers the money of *private* investors was "a proper function of the government." Senator Cummins said (53 Cong. Rec. 7246) that Congress, to make the act constitutional, deemed it necessary to insert the provision, however "*small or insignificant*," authorizing the agencies to perform governmental functions by acting as government depositaries *if and when* called upon.

(d) It may, therefore, be emphatically asserted and repeatedly reasserted that Congress never intended by passing the Act to exercise any power of appropriation. Hence, to sustain it on any such ground would be to ignore the *real* purpose and intent of Congress.

(4th) *An attempt to invoke the power of appropriation is not only contrary to the intention of Congress, but is also against that which was*

by the sponsors and advocates of the Act declared to be its sole purpose.

No advocate or sponsor for the Act ever sought to justify it as an exercise of the power of appropriation. On the contrary, all such persons proceeded upon the theory that there would be no appropriation (*Supra*, Div. IV, subd. b). Of this, there is not the slightest doubt. The American Commission (63 Cong., 2d Session, Sen. Doc. 261, part 1, page 13) said that the scheme should "be worked out *without* government aid." The United States Commission (63 Cong., 2d Sess., Sen. Doc. 380, p. 22) reported that "it is wise legislation *rather than liberal appropriations*, which rural credit mostly needs at our hands." President Wilson (119 Atlantic Monthly 222) in his first annual message of December 2, 1913, stated:

"The farmers, of course, ask and should be given no such privilege as extending to them the credit of the government itself."

Ex-Secretary McAdoo on a similar subject (119 Atlantic Monthly, 223) said:

"* * * you ask us to stand for a proposition to *lend* money to *private* corporations or individuals upon the security of mortgage. Never on the face of the earth!"

Secretary Houston, when head of the Agricultural Department, in his report of 1914 (119 Atlantic Monthly, 222) said:

"The chief difference of opinion arises whether there should be *special aid* furnished

by the government. There seems to be no emergency which requires or *justifies* government assistance to the farmers directly through the use of the government cash or the government credit."

The Senate and the Joint House and Senate Committee on Rural Credits (64 Cong., 1st Sess., House Doc. 494, p. 6) reported:

"The American farmer does not come to Congress with a hard luck story. He *does not ask* the government to *bestow* on him the *public* money that all the people have contributed for taxes."

The only purpose was, as declared in the congressional debates and the government literature (*Supra*, Div. IV, subd. b), and recognized by observing writers (119 Atlantic Monthly 222; 10 Lawyer and Banker and Southern Bench and Bar Review, October, 1917, p. 402) at the time, to obtain the *private* money of *private* investors to loan to farmers at *low* interest rates. The *chief, primary* and *sole* purpose of the Act was said by the House and Senate Joint Committee (64 Cong., 1st Sess., Report No. 630, p. 2) and Senators Hollis (53 Cong. Rec. 6793), Robinson (*id.* 7228) and Cummins (*id.* 7246) to be to create a system of *farm* lending. It is so recited in the Farm Loan Primer (p. 3), and so stated in the First Annual Report of the Federal Farm Loan Board pp. 13, 17, 22.

(5th) *The power to pass the Act as an appropriation measure is denied by the decisions here.*

(a) That which has already been said as to the *main* functions of the agencies (*Supra*, Div. V, subd. 2d) and the right of the court to look through mere forms and ignore all devices, pretexts and pretenses (*Supra*, Div. V, subd. 5th, 6th) is equally applicable where the power attempted to be exercised is that of appropriation. To say that the Act was *intended* to be or was passed as an appropriation measure is to deny the truth. To intimate that the *main* function of the agencies was to deal with an appropriation (*Supra*, subd. 2d) would be to countenance a mere pretense and makeshift in the face of the *intention* of the lawmakers to the contrary. To rest the authority to pass the Act on the power to appropriate money would be the merest pretext.

(b) From that which has already been said it may be safely asserted that unless the *functions* of the agencies were, in the *main*, to deal for the government with an *appropriation*, no subsequent *pretense* of so doing can make the Act valid. The *principal* purpose must have been to *appropriate* public money; the *private* business must have been incidental thereto (*Supra*, Div. IV, subd. 2d).

(c) *M'Culloch v. Maryland*, 4 Wheat. 316, 423, explicitly decided that if "under the *pretext* of exercising its powers Congress should attempt to pass a law to accomplish an object not intrusted to the government," the Act would be declared

unconstitutional. So in *Osborn v. Bank*, 9 Wheat. 738, 860, it was expressly held that "it has never been supposed that Congress could create" a corporation whose immediate purpose was to loan money. These two cases are controlling.

(6th) *Not only was there no intention of exercising any power of appropriation, but the Act, on its face, shows that none was exercised.*

The attempt to sustain the Act as an exercise of the power of appropriation could well rest here. If, however, substantial reasoning in its support could be applied or clearly and logically followed, the entire controversy would be narrowed to the two inquiries whether the Act is an appropriation measure, and, if so, whether the means adopted were, as they must be (*M'Culloch v. Maryland*, 4 Wheat. 316, 421; *Kansas v. Colorado*, 206 U. S. 46, 88; *First National Bank v. Union Trust Co.*, 244 U. S. 416), appropriate to the end in view.

(a) A casual reading demonstrates that it is not, and, in fact, was never intended to be (*Supra*, Div. IV) an appropriation of money. Only *incidentally* is the public money used, and then only *temporarily* and as a means of accomplishing the real object of the legislation. In no sense is the use of public money *essential*, nor is it in any degree the *object* to be attained. The only appropriation is \$100,000 (sec. 33) for the minor and purely incidental purpose of carrying into effect an Act which there is *supposedly* power to pass. If, within thirty days after the opening of sub-

scription books any part of the minimum capitalization of the Land Banks remains unsubscribed, the Secretary of the Treasury shall, on behalf of the government, subscribe for the balance (sec. 5, par. 5). Any money advanced for any such government stock shall be practically *as a loan*, repaid without interest. \$6,000,000 of public money was authorized to be deposited in the Land Banks for their *temporary* use (sec. 32). These are the only references to public money, and upon these any claim of an appropriation must be based. Unquestionably the chief, primary and *sole* purpose of the Act is farm lending. The title, misleading as it is, shows that it is not an appropriation measure, but was by its framers only conceived to be one "to provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States and for other purposes." These words suggest no thought of an appropriation. Complete machinery was provided for accomplishing the ends in view. It was contemplated that it should, in the first instance, all be done without the use of a dollar of public money, except the necessary expenses of organization, and even they were to be repaid. Land Banks, Joint Stock Banks and Farm Associations were to be formed without financial assistance from the government, and, with the exception of Land Banks, must be formed without its assistance. In the one excepted case it was

provided that if the necessary stock subscriptions did not come from private sources, the government should subscribe the minimum balance, to be repaid, without interest or dividends, as rapidly as additional stock could be placed. This in effect was a simple loan, which was a *private*, not a *governmental*, matter (*Supra*, Div. V, subd. 4th). The legislation is perfect and complete in all its parts without an appropriation. The latter, even if it could be implied, is simply an *incident* designed to make the Act effective if other means should temporarily fail. The Act can no more be justified as the exercise of the power of appropriating public money than could one incorporating a national insurance or other *private* company, to which was attached a section providing that the government should subscribe for any stock not subscribed by individuals. That which it does is to provide *private* capital for *private* investment on *private* farm land security, the standardization of *private* farm mortgage investments and the equalizing of rates of interest on *private* farm loans. Some public money may temporarily be used to put the Act into operation. The immediate purpose and actual *intent*, however, was that all the organizations should function absolutely *without public money*. Every provision was expressly and adequately framed to accomplish that end. The plain truth is that the system created is one for conducting a *farm* loan business by *national* corporations under *national* control and regulations, free from state interference and from any kind of *taxation*, state or federal.

(b) Considered, however, as an appropriation measure, the means adopted are neither necessary nor proper to the end in view. Congress may, of course, adopt any proper means to accomplish a legitimate end. It can do no more (*M'Culloch v. Maryland*, 4 Wheat. 316, 421; *Kansas v. Colorado*, 206 U. S. 46, 88; *First National Bank v. Union Trust Co.*, 244 U. S. 416). The end to be accomplished by this legislation was not the development of agriculture or the stabilization of farm credits. No power to develop agriculture or stabilize farm credits can be found anywhere in the Constitution. It cannot rest under the general welfare clause, any more than could (*Kansas v. Colorado*, 206 U. S. 46) the power to reclaim arid lands. The legitimate, and only legitimate, end of the legislation is the spending of public money for the private business and private ends of a particular class of people. This is the end which must, if it can, justify the means. The apparent strength of any argument in favor of the power to pass the Act must be based upon the fundamentally erroneous deduction that the development of agriculture is within the general welfare clause, therefore a legitimate object of congressional appropriation; that being such a legitimate object, Congress may adopt any proper means to further it, and that the means under consideration are proper. This is a complete *non sequitur*. It might possibly be argued that, if a legitimate object of congressional appropriation, any means proper to carry into effect such appropriation, if made, may be adopted. Without discussing the question it may be said

that such a conclusion is untenable, for the means provided by the Act are not proper to the end in view. If Congress could *lawfully* appropriate \$9,000,000 for the purpose of making loans to farmers, it is wholly unnecessary to consider whether it would be possible to create boards and corporations to handle such *public* funds and make therefrom such loans under suitable provisions. No such thing was attempted. Nor is it necessary to consider whether provisions *might* have been made for the continuous use of the money so appropriated by relending it when the original loans should be paid off. No such provisions were made. On the contrary, Congress provided for the organization of *private* corporations whose capital is to be subscribed in the first instance by *private* individuals and later by other *private* individuals organized into Farm Associations. It provided for these *private* corporations, raising additional funds by the sale to *private* individuals of tax-exempt bonds to be paid for by *private* funds. It provided expressly and necessarily that even such public money as might temporarily be used to put the system on its feet should be promptly and regularly repaid to the government *as fast as any business was done*. The machinery is especially arranged *not* to get *public* money in, but to keep *public* money out and to eliminate expeditiously any *public* money that may get in. No loan can be made by the Land Banks without a *private* subscription to their stock. This leads directly to the retirement of the government stock. The scheme cannot succeed without the speedy disappearance

of all *public* money therefrom. It was the evident purpose that no *public* money should be used, unless absolutely necessary, but that if any such were necessary, it should be as little in amount and for as short a time as possible. The means were admirably adapted to accomplish *that* purpose. This, even more plainly, appears in the case of the Joint Stock Banks. These institutions, *privately* financed, owned and controlled, never handle a penny of government money, even *temporarily*. They might, perhaps, be a proper part of a scheme of farm credits, but they are and can be no part of any machinery for expending public money. Their real purpose is to afford the opportunity for large investors to escape the payment of just taxes, a thing for which they are always looking.

These contentions go to the very root of the matter. No one can read the Act without being convinced, beyond a doubt, that the appropriation was a means to carry into effect the legislation and not the legislation a means to carry into effect the appropriation. Unless Congress can legalize, as it cannot (*Kansas v. Colorado*, 206 U. S. 46, 88, 89), *any* Act thought by it to be beneficial by appending an appropriation to carry it into effect, then the power here attacked cannot be *implied* from the right to appropriate money. If Congress can so act, then it can organize corporations to manufacture farming implements or to build workmen's cottages or lawyers' homes or to reclaim arid lands or to furnish water to cities, provided only that there is some appropriation of public money. Doubtless such organizations would always succeed in spending the money, but that fact

alone would not justify them as a proper means for the execution of the powers of Congress.

As an intelligent writer (10 Lawyer and Banker and Southern Bench and Bar, October, 1917, p. 402) said:

"Should the Supreme Court sustain this right, and hold that the 'Federal Farm Loan Act' is constitutional, *a fortiori*, every corporation having to do with the means of preserving the government would be exempt, and it is safe to assert that, once the inroad is made, all such corporations, with their subtle, powerful influence, would soon open the road and enlarge it to such an extent that they would all be traveling it; the states would necessarily cease to be, and then there would be a single government, and that in the hands of the corporations."

(c) An appropriation, even if made, cannot be used as a mere pretext to cover the exercise of an unauthorized power (*Supra*, Div. VI, subd. 5th, 6th). The present is a striking example of the attempt. Though the public money now invested was really advanced as a loan and will shortly be returned to the government, the pretended means for spending can go on forever, functioning a complete system for doing, in the various states, a *private* farm loan business. Dealing wholly in *private* capital, with not a cent of *public* money invested or to be invested, the banks, without any additional charter, will remain *forever* justified by the thought that they *once* assisted in spending some *public* money *conditionally* appropriated for *temporary* use in *establishing the very agencies in*

question. Congress has no power to create corporations for the purpose of handling an appropriation whose term of existence is not limited to the duration of the appropriation, but whose essential functions do not come into full play until after the repayment of the public money, and continue thereafter indefinitely as *private* corporations conducting *private* business. The designation of the agencies as depositaries of public money, *if and when desired*, is, as already shown (*Supra*, Div. V, subd. 4th), a minor provision, *incidental* to the *main* purpose, which cannot alone justify the entire scheme. It is a mere *incident* to a *private* business in a *private* interest. If it justifies the scheme, then Congress can create corporations to exercise powers of the widest latitude in *any kind* of business simply by designating them as depositaries or fiscal agents, though, as here, they were never intended to and never did act as such. These mere designations cannot make the corporations appropriate to the end in view, if otherwise they would be inappropriate (*Supra*, Div. V, subd. 5th).

(7th) *It would be a mere pretext to justify the Act as an appropriation authorizing the creation of corporations for unlimited periods to loan unlimited sums to farmers and forever exempt their assets and obligations from any kind of state taxation.*

(a) Even if the power to appropriate money could possibly be exercised through the creation of a corporation to handle the appropriation, still

that would not give the right to create one whose *principal* business was in the form of an activity other than dealing with the appropriation; nor could such corporation be used *chiefly* to enable *private* persons to loan their money or invest in its bonds. In no event could Congress authorize, as it attempted to, the creation of a corporation which, *after* spending the alleged appropriation, could go on, without more, fully authorized to continue indefinitely the *private* business of money lending. This would merit the condemnation (*M'Culloch v. Maryland*, 4 Wheat. 318, 423) of Mr. Chief Justice Marshall that:

"Should Congress *under the pretext of executing its powers* pass laws for the *accomplishment of objects not intrusted to the Government*, it would become the painful duty of this tribunal * * * to say that such an act was not the law of the land."

(b) Besides agriculture, there are many other subjects of national concern, such as the problems of personal morality, education of children, insurance of lives against death, disability, accident and disease, and the protection of property.

If Congress, under the power of appropriation, *temporarily* exercised to a *limited* amount, can create a great system of *private* money lending, there is no limit to which the exercise of the power may be carried. For instance, the protection of property against fire and lives against death are matters affecting every one. By a small *temporary* appropriation to capital stock, Congress could acquire the power to create,

through private capital, gigantic life and fire insurance companies which would furnish money to persons suffering losses from fire or death in return for low premium rates. The immense capital thus invested, and payments made for death and for losses and those received from the members and the investment thereof could, on the same reasoning, be exempted from state taxation. The conservation and development of coal, timber, water power and the like are matters of great concern which directly affect the general welfare. Congress could, by small, temporary subscriptions to capital stock, authorize the creation of a "Conservation and Development Bank" to lend money at low rates to the owners, taking mortgages therefor and issuing its collateral bonds against them, all of which should be exempt from all state taxation. So, without appropriating any money, it could also authorize *private* capital to organize Joint Stock companies to engage in the same business, likewise exempting their bonds and mortgages from taxation.

Again, the irrigation of arid lands is a public purpose (*Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112; *Houck v. Little River Dist.*, 239 U. S. 254). Congress could, in order to stimulate the irrigation of privately owned arid lands, authorize the creation of two classes of Irrigation Banks, one to which it would make a small temporary subscription for capital stock, and the other wholly organized by private individuals. It could authorize such banks to issue irrigation bonds secured by mortgages upon the irrigated lands. These could be exempted from state taxation. The

principle established by *Kansas v. Colorado*, 206 U. S. 46, 87-89, would thereby be destroyed.

Education, no less than agriculture, is a matter of national concern and welfare. Congress could, by a similar temporary appropriation for capital stock, authorize the creation of a corporation, free from state tax, for the purpose of furnishing money to promote the cause of universal education and authorize it to lend money at low rates. This money could be loaned only to persons building or operating school houses, colleges, technical or professional schools, and secured by mortgages on the plants and on the tuition fees of the students. It could exempt such bonds and mortgages from state taxation. It could authorize men like Mr. Rockefeller and his associates to create a joint stock company with hundreds of millions of capital to be loaned or otherwise expended in assisting persons engaged in educational work and withdraw from state taxation all such funds, together with the mortgages executed by the educators in return for the loans. So, Congress cannot regulate child labor (*Hammer v. Dagenhart*, 247 U. S. 251). Yet, it could, under the power of appropriation, create a corporation in which *private* capital could be invested for the purpose of discouraging child labor in factories. This by lending money at low rates of interest to those factories who would refuse to employ child labor. It could exempt from state taxation all the money earned, the loans thus made and the mortgages thus taken, as well as the bonds issued against them. The congressional appropriation soon being returned to

Congress (as the farm loan appropriation is being returned), there would exist, without further charters, huge mortgage lending and money earning companies assisting factories, all of whose operations and investments would be exempt from state taxation. Congress, by the same expedient of a trifling appropriation, could permit men like Mr. Rockefeller and his associates to organize a corporation having for its object the suppression of vice, by means of loans at low rates, or bounties paid, to immoral people in order to assist them in abandoning their vicious careers and getting a new start in life. The capital thus invested, the loans taken from the unfortunate people and the bonds issued thereon could be exempted from state taxation.

The development of the agricultural interests does not more greatly affect the general welfare nor is it a more important public purpose than the alleviation of poverty and unemployment. By the same system of appropriation, Congress could authorize philanthropists to organize corporations, likewise exempt from taxation, by which immense sums of private capital may be devoted to loans to the poor or unemployed, either without security or secured by chattel mortgages, assignments of salaries, or future earnings or otherwise. These examples could be multiplied indefinitely. Suffice it, Congress, on the same reasoning, could aid any situation, by authorizing *private* individuals to embark in any *private* business, regardless of its substantial relation to the execution of a federal power.

(c) The power to borrow money on the credit of the United States does not authorize the issuance and sale of Farm Loan Bonds to private investors, nor the exemption thereof from state taxation.

While Congress has the power "to borrow money on the credit of the United States," the Farm Loan Bonds do not represent the exercise of any power by Congress to borrow money on the credit of the United States. Congress does not borrow the money. The money is not borrowed on the credit of the United States. No money realized from the sale of the bonds is placed in the United States Treasury. None of the proceeds belong in any way to the United States. The disposition thereof is not made by Congress, but by the directors of the Land Banks who are not public officials. Farm Loan Bonds are neither an asset nor a liability of the government. Congress voted down an amendment to guarantee the bonds, which shows that it did not intend to be considered responsible therefor (*United States v. Del. & Hudson R. R. Co.*, 213 U. S. 366, 414). The government disclaims any liability on the bonds (Farm Loan Primer, Ans. 102). Mr. Carter Glass said in a debate that the government "took a very limited *temporary* stake in the system"; that he did *not* consider the Farm Loan system a government "instrumentality," and that he disagreed with the opinion of Ex-Justice Hughes that the United States was *morally* bound on the bonds.

Money obtained from *private* investors by the sale to them of bonds issued by the Land Banks

and secured by the farm mortgages of private farmers, is not money borrowed on the credit of the United States, and is not an exercise of the congressional power to borrow money.

(8th) *The power to appropriate money does not authorize Congress to do more than distribute the money appropriated. It does not authorize the creation of private corporations to do a private business.*

Article I, section 8, clause 1, of the Constitution provides:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

Although the subject of much discussion, it was decided in *Kansas v. Colorado*, 206 U. S. 46, and may be considered as settled, that the italicized words did not confer on Congress any substantive power to provide for the country's general welfare, nor are they merely harmless introductory words limiting the subsequently enumerated powers.

(Federalist No. 41; Jefferson's "Opinion on the constitutionality of a National Bank," February 15, 1791; Jefferson's letter to Gallatin, June 16, 1817; Madison's veto of the Bonus Bill, March 3, 1817; Monroe's veto of the Cumberland Road Bill, and his Views of the President of the United States on the Subject of Internal Improvements, May 4, 1822; Madison's letter to Steven-

son, November 17, 1830; 3 Farrand's Records of Federal Convention, 483; Story on Constitution, sections 907-930; 1 Willoughby on Constitution, sec. 22; 1 Tucker on Constitution, secs. 222-223; 1 Hare's Am. Const. Law, 241-242; 1 Watson on Constitution, 398; 10 Fed. Stat. Ann. 403 and authorities cited; *Van Brocklin v. Tennessee*, 117 U. S. 151, 158.)

The accepted view is that Congress has power to lay and collect taxes *for the purpose* of paying the debts and providing for the common defense and general welfare, thereby *qualifying the objects* for which taxes may be laid.

Despite the powerful arguments of many statesmen, the views of Mr. Hamilton, in his Report on Manufactures, have prevailed in actual practice, namely, that Congress can appropriate money raised by taxation for any purpose or object which it deems conducive to the *general*, as distinguished from *local*, welfare; and such action is almost, if not entirely, beyond the control of judicial power. While practically there are few, if any, limitations on the power of Congress to *appropriate* money, all the authorities are agreed that *the power is exhausted upon the application of the money*. Mr. Hamilton, in his Report on Manufactures (December 5, 1791), said:

"It is, therefore, of necessity, left to the discretion of the national legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns

the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money.*

• • • No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. *A power to appropriate money with this latitude, which is granted, too, in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication.*"

President Monroe, in his "Views of the President of the United States on the Subject of Internal Improvements," accompanying his veto of the Cumberland Road Bill (which is universally conceded to be the most thorough and elaborate view which has ever been taken of the subject of Congress's power to appropriate money) was of the opinion that Congress could appropriate money to any purpose which it deemed conducive to the general welfare, *but that it could go no further than to appropriate the money* and could not undertake the projects to which the money was applied.

After disposing adversely of Mr. Madison's contention that the power of appropriation was limited to the execution of the powers enumerated or implied therefrom, Mr. Monroe (II Messages and Papers of the President, p. 167) said:

"If, then, the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants

according to a strict construction of their powers, respectively, is there *no limitation* to it? Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not."

He then argues that the money can be appropriated to any great national purpose, including good roads, canals, foreign concerns, and (p. 168) says:

"The right of appropriation is nothing more than a right to apply the public money to this or that purpose. *It has no incidental power, nor does it draw after it any consequences of that kind.* All that Congress could do under it in the case of internal improvements would be to appropriate the money necessary to make them. For every act requiring legislative sanction or support, the State authority must be relied on. The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work when finished must be done by the State. To these purposes the powers of the General Government are believed to be utterly incompetent."

In his accompanying veto message Mr. Monroe said:

"A power to establish turnpikes with gates and tolls, and to enforce the collection of tolls by penalties, *implies a power* to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the

proprietor on a valuation and to pass laws for the protection of the road from injuries, and if it exist as to one road it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to legislate for the others. It is a complete right of jurisdiction and sovereignty for all the purposes of internal improvement, *and not merely the right of applying money under the power vested in Congress to make appropriations*, under which power, with the consent of the states through which this road passes, the work was originally commenced, and has been so far executed. I am of opinion that Congress do not possess this power; that the states individually cannot grant it, *for although they may assent to the appropriation of money within their limits for such purposes*, they can grant no power of jurisdiction or sovereignty by special compacts with the United States. This power can be granted only by an amendment to the Constitution and in the mode prescribed by it."

Andrew Jackson, in vetoing the Maysville Road Bill, with reference to the appropriation of money (*id.*, p. 488), said:

"No aid can be derived from the intervention of corporations. The question regards the character of the work, not that of those by whom it is to be accomplished."

Mr. Madison, in vetoing the Bonus Bill on March 3, 1817 (*id.*, Vol. I, p. 584), said:

"A restriction of the power 'to provide for the common defense and general welfare' to

cases which are to be provided for by the expenditure of money would still leave within the legislative power of Congress all the great and most important measures of government, money being the ordinary and necessary means of carrying them into execution."

In 1 Willoughby on the Constitution, it is (sec. 269) said:

"In fact, however, the limitation that an appropriation should be for a public purpose has been without practical effect, as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and, as regards the restriction that appropriations shall be in aid of enterprises which the federal government is empowered to undertake, the doctrine has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate."

In 1 Hare's American Constitutional Law, pages 241-250, there is an admirable review of the whole subject, including many of the historic instances involving the appropriation of money by Congress. He points out that the construction of railways, high roads, bridges and other internal improvements is derivable, *not* from the power to appropriate money, but from the war, postal and commerce powers. Referring to certain appropriations it is said:

"In the greater number of the instances above referred to, the government did not act in its sovereign capacity, *but like a rich and public-spirited individual who draws his pursestrings for the common good*; and therefore they do *not* tend to show that Congress may, by virtue of the eighth section of the first article, devise internal improvements and enact such laws as are necessary and proper to render the scheme effectual.

It is one thing to construct a highway by virtue of the power of eminent domain, and exercise an absolute jurisdiction over it when made, *and another to lay out a road through land acquired by purchase with the consent of the state through which it passes*. So Congress may well be entitled to *appropriate money for public education, or even to build and endow colleges and schools, and yet want the right to make attendance compulsory and enforce it by fines or penalties.*"

It is also there said:

"In other words, although the United States may go into the market and do whatever can be done by the use of money without the exercise of legislative, executive, or judicial power, they cannot, speaking generally and where there are no special grounds, do more."

In Tucker on the Constitution, Vol. 2, secs. 222-234, there is elaborate consideration of the entire subject; and it is pointed out that if Congress, under the power of appropriation, can supervise and intervene in the administration of the project to which the money is applied, our government

would be exercising a power not conferred upon it.

The extent of the power of appropriation has never been determined by the court. (*Field v. Clark*, 143 U. S. 649, 695; *U. S. v. Realty Co.*, 163 U. S., 427, 433.) But for the purposes of this argument, the right of Congress to appropriate public money to any purpose it may desire need not be questioned. It is, however, insisted that the power to appropriate for the general welfare is limited to the disbursement of money, with, at most, such machinery for its application to the desired end as may be used without the exercise of federal power to abridge the rights of the states or the citizens thereof. This is a very different thing from the creation of *private* corporations whose *chief* and *only* purpose is to loan cheap money to farmers.

VII.

The exemption from taxation is unwarranted.

(a) Under Section 21, each Land Bank bond *must* recite "that it is not taxable by *national, state or municipal* authority." Section 26 specifically exempts Land Banks and Farm Associations from practically *all* taxation. It also likewise exempts *all* Land Bank and Joint Stock Bank *farm* loan mortgages and bonds, and the income therefrom, declaring them to be "instrumentalities of the government." The validity of these provisions is separately challenged. The enormous value of this exemption has been (Statement, Div. 6) already adverted to.

(b) If, of course, the Act is unconstitutional as to either class of banks, no tax exemption can, as to that bank, be upheld, because as Mr. Justice Field in *Norton v. Shelby County*, 118 U. S. 425, said:

“* * * an unconstitutional Act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is in legal contemplation as inoperative as though it has never been passed.”

This by one of the counsel (Brief and Argument for Appellee Federal Land Bank of Wichita, Kansas, p. 17) is thus practically conceded:

“The validity of that feature of the Act is a corollary to the determination of the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. Congress expressly declared that these bonds should be deemed to be instrumentalities of the Government of the United States and as such should be certified by the federal officers composing the Federal Farm Loan Board as regularly issued and exempt from taxation. This question is thus not as to intent but as to power. And there is no room for controversy as to the power to give the prescribed immunity if Congress had the power to create these corporations and to provide for the issue of these bonds.”

(c) While *real* governmental instrumentalities are exempt and should be exempted from *state* taxation (Willoughby on Constitution, sec. 45, *et seq.*), the exemption should never be lightly ex-

tended (*Thomson v. Union Pacific R. Co.*, 9 Wall. 579). This because Congress cannot (*Supra*, Div. V, subd. 5, 6) call something such an instrumentality and by such a simple method relieve it from state taxation. Otherwise, little by little, encroachments could be made until there is nothing left for a state to tax, and the state itself would fall for lack of revenue to support it. There must, therefore, be an *actual* and *essential* governmental instrumentality before, without more, it is or can be made exempt from any state tax. So, whatever Congress may do as to exempting property from a tax levied under its own authority, it cannot grant an exemption from a state tax unless the latter be levied upon that which is *really* an *essential* instrumentality of the government.

The power to tax exists concurrently in both the state and federal governments and is equally indispensable to the existence of each (*M'Culloch v. Maryland*, 4 Wheat. 316, 425; *Lane Co. v. Oregon*, 7 Wall. 71, 76, 77). There are certain *implied* limitations on the taxing power of both arising out of the very nature of our dual system. (*M'Culloch v. Maryland*, 4 Wheat. 316, 425, 426; *The Collector v. Day*, 11 Wall. 113, 123; *U. S. v. Railroad Co.*, 17 Wall. 322, 327; *Railroad Co. v. Peniston*, 18 Wall. 5, 30; *Dobbins v. Commissioners*, 16 Pet. 435, 447; *Van Brocklin v. Tennessee*, 117 U. S. 151, 157.) Any restriction upon the state's power to tax arises from the operation of the Constitution itself. Congress cannot, by any declaration of exemption, create one that would not have equally existed

without it (*id.*). In other words, any attempt by Congress to *exempt* property from state taxation, if valid, is merely declaratory of what the exemption would have been anyway, without such declaration (*id.*). So it was decided in *M'Culloch v. Maryland*, 4 Wheat. 316, 425, 426, and *Osborn v. Bank*, 9 Wheat. 738, 777, 794, 795, and such is the effect of the various cases, saying, as between the states and United States, what can and what cannot be taxed. Thus it has been held that the states cannot tax government bonds or other direct obligations of the United States (*Weston v. City of Charleston*, 2 Pet. 449; *Bank v. Supervisors*, 7 Wall. 26); nor bonds issued by municipalities in the territories established by Congress for the government of the people before their admission as states (*Farmers' Bank v. Minn.*, 232 U. S. 516) or by the District of Columbia (*Grether v. Wright*, 75 Fed. Rep. 742, 753, *et seq.*); nor land owned by the United States, either when purchased in pursuance of a governmental function, or acquired as a part of its territorial domain by a treaty or otherwise (*Van Brocklin v. Tennessee*, 117 U. S. 151); nor the receipts from coal mines owned by the Indians but operated by private parties under a lease from the government in pursuance of the government's treaty obligations to apply the revenues from the mines to the education of Indian children (*Choctaw & Gulf v. Harrison*, 235 U. S. 292); nor the salary of a federal official (*Dobbins v. Commissioners*, 16 Pet. 435); nor the necessary operation of a means adopted by the United States to execute its express powers (*M'Culloch v. Mary-*

land, 4 Wheat. 316; *Williams v. Talladega*, 226 U. S. 404, 418, 419); nor the franchise of a corporation created by Congress (*California v. Pacific R. R. Co.*, 127 U. S. 1); nor the tangible or intangible property (except real estate) of corporations organized primarily as instrumentalities of the government (*Owensboro National Bank v. Owensboro*, 173 U. S. 664).

It has also been held that Congress cannot tax the bond or obligations of a state or its municipal subdivisions (*Pollock v. Farmers Loan & Trust Co.*, 157 U. S. 429, 584; *Mercantile Bank v. New York*, 121 U. S. 138, 162); or the salary of a state official (*Collector v. Day*, 11 Wall. 113, 124); or municipal revenues (*U. S. v. Railroad Co.*, 17 Wall. 322).

The states can tax the property and operations of persons and corporations engaged in *private* business, although also employed by the federal government in the transaction of its *governmental* business. Accordingly, it has been held that a state can tax checks drawn by the United States in payment of its interest obligations, notwithstanding an attempted congressional exemption of United States obligations from state taxation (*Hibernia Savings Society v. San Francisco*, 200 U. S. 310), the personalty, credits, moneys, etc., of a railroad company chartered by Congress, financially assisted by it, and engaged in performing federal services (*Thomson v. Railroad*, 9 Wall. 579; *Railroad Co. v. Peniston*, 18 Wall. 5, 30-35; *Union Pacific v. Lincoln County*, 1 Dill. 314); while it is a matter of common knowledge that the states can tax and do tax many species of prop-

erty which are being used by agents of the United States as the means of executing powers of the government, such as telegraph lines, dredges and manufacturing plants (*Gromer v. Standard Dredging Co.*, 224 U. S. 362; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382).

The principle underlying the cases is that neither the state nor federal government can tax the property or operations of any *essential* governmental instrumentality of the other.

The reason why the states can tax the property and business of railroads, telegraph lines, etc., although they may have been chartered by Congress and used in part as governmental instrumentalities, and yet cannot similarly tax national banks, lies in the distinction between the two instrumentalities. The railroad and telegraph lines could, in fact, perform all the services for the federal government just as well *without* the addition of private business as they can with it (except as a money making proposition); and hence in accordance with the express language of *Osborn v. Bank*, 9 Wheat. 738, 861, the property and private operations of the companies are generally taxable by the state. The banks, as pointed out in that case and in *M'Culloch v. Maryland*, 4 Wheat. 316, could only satisfactorily perform their essential *governmental* duties by being endowed with the right to transact private business; as private banking business was the very thing which was needed to enable them to be an efficient machine for carrying out their fiscal operations.

A Joint Stock Bank, acting as a depository, could, like the railroads, perform such a function

just as satisfactorily to the government without, as with, the addition of private business. This is an additional reason why the Joint Stock Banks fall as depositaries into the category of the railroads and not of that of the national banks.

The mere *possibility* that at some future time the United States may elect to *designate* a Land or Joint Stock Bank as a depositary and thereafter may further elect actually to use it as such, while in the meantime the corporation is engaged solely in *private* business for *private* gain, certainly does not constitute the corporation such an *essential* instrumentality of the federal government as to exempt it from state taxation. So it was decided in *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382. There an old government fort (of course not taxable) was conveyed to a shipbuilding company upon condition that it would construct a dry dock thereon; that the United States should have the right to use it forever free of charge, and that if its use as a dry dock was ever abandoned the property should revert to the United States. It was held that the property was subject to *state* taxation. Mr. Justice Holmes said:

"It would be a very harsh doctrine that would deny the right of the states to tax lands because of a *mere possibility* that they might lapse to the United States."

Whether such loans or bonds are or can be made *governmental* instrumentalities, depends upon whether the *main* purpose of the agency issuing them is to exercise a *governmental* function, or

one that pertains to *private* or *proprietary* interests (*Supra*, Div. V). Hence, in the end, this may be concluded: If the *main* and *essential* purpose of either agency is to exercise a governmental function, to which the exercise of *private* powers is a mere incident, an exemption from *state* taxes exists as to that particular agency. It is otherwise if the *main* and *essential* purpose is to exercise a *private* function, to which the *governmental* powers are mere *incidents*.

VIII.

Even if the Act and its tax exemption feature can be upheld as to the Land Banks, they cannot be sustained as to the Joint Stock Banks.

(a) As an evident after-thought and to enable *large* investors to escape *all* kinds of income taxation, *some* person by *some* inconceivable method, convinced Congress that it should, as it did (sec. 16) provide for *other* unrestricted *money-making* agencies, in *addition* to the Land Banks, owned and controlled by *outsiders*, to deal only with the *large* investors. These other and unrestricted *outside* agencies are federal corporations known as Joint Stock Banks.

(b) They, *without limit in numbers*, can, with nothing but the approval of the Board, be organized by *any* ten or more *natural* persons, regardless of their being borrowers. Neither the government, Farm Association nor Land Bank has any connection therewith nor any interest therein, nor can either hold any of their stock. The organiza-

tion is thereby in each instance, without restrictions, made up of *outsiders* and kept in the hands of those who happen to be *avored* by the Board. The sole corporate purposes are to loan, in *unlimited* amounts, on *farm* mortgage security and issue collateral trust farm loan bonds secured thereby. Such an institution must have, at least, five directors. All stock has a double liability, and the stockholder has the same voting privilege as a stockholder in a national bank. It can (sec. 16) receive no money on deposit. It can do no *general* banking or other business. It has (Bill, Rec. 10) never done any. Its *sole* business is to loan on *farm* mortgages, and issue and sell bonds secured thereby. \$250,000 of its capital must be subscribed and one-half thereof paid up. To issue any bonds, all the capital must be paid. It has, except when otherwise specifically provided, the same powers and is subject to the restrictions and conditions imposed on Land Banks, but only so far as the same may be applicable. Practically every feature which led to or could justify the organization of Land Banks is declared to be inapplicable. Thus, interest rates of Joint Stock Banks cannot, as in the case of Land Banks (sec. 17, subd. [b]) be reduced by the Board so as to make any equalization thereof; their loans, as required in the case of those of Land Banks (sec. 12, subds. 1, 4, 6, 7, 10), need not be secured on *farm* lands in the banking district, nor made to *cultivators* of land, nor the proceeds thereof used to buy or improve the farms, nor the amount of each loan limited to \$10,000, nor the borrowers required to agree that if the whole or any portion of the loan

be expended for purposes other than those specified, or if there be any other default, the whole amount shall become due. The borrowers cannot, as in the case of the Land Banks, use part of the loan to pay for any stock in a Farm Association. The only substantial limitation is that the loans shall be made if secured by *first* mortgage on *farm* lands within the state in which the Joint Stock Bank is located or one contiguous. Presumably, as a source of *private* profit to this outside agency, the interest charged on a mortgage loan can exceed by one per cent the rate established by the last series of farm loan bonds issued. All bonds, while in a form prescribed by the Board, must have added thereto the words "Joint Stock," and by engraving, form and color be made distinguishable from Land Bank bonds.

(c) A Joint Stock Bank, like a Land Bank, *can be designated* as a depository of public moneys, or *may be* (sec. 6) employed as a financial agent of the government. It is not required to be. Even this, however, is not the *main* purpose of the Act, but rather a mere *incident* to the *private* business done for the *private* interest. Or else it is a mere device or subterfuge in an attempt to make constitutional a statute which otherwise would be unconstitutional. However, it has never acted as a bank, received current deposits or in any wise acted as a government depository or financial agent (Bill, Rec. 10).

(d) As if Congress had not done enough for the outsiders' profit-making machine and the large investors' tax exemption haven, all Joint Stock farm loan bonds are made lawful investments for

fiduciary and trust funds, they are permitted to be used as security for public deposits and may be bought and sold by any bank of the Federal Reserve System.

(e) All farm mortgages taken and all farm loan bonds issued are (sec. 26) declared to be "instrumentalities of the government," and all income therefrom actually exempted from *all* federal, *state* and municipal taxes.

(f) Large investors have not failed to profit by the organization of these banks. Twenty-seven of them have been organized (Bill, Rec. 9), and up to October 31, 1919, they had paid in \$7,812,050 of capital, issued \$46,255,000 of farm loan bonds, of which \$41,000,000 are still outstanding (Bill, Rec. 11; Report 317, Senate Bill No. 3109, Calendar No. 270, 66th Congress, 2d Session). So un-American are these institutions, and so unfair to the public is the withdrawal by *large* investors of *large* investments from taxation that the Senate Committee on Currency and Banking has favorably reported (Report 317, Appendix, Part 2, the original Appellant's Brief, p. 91) a bill (Appendix, art 3; *id.*, p. 94) to repeal, *for the future*, all tax exemptions of the loan bonds because "the tax exemption privilege ought never to have been extended," and "the accumulation of large aggregations of capital, wholly exempt from any and all forms of taxation, is wrong in principle and should be discontinued." The committee was of the clear opinion that "the *large* taxpayers will gradually absorb these bonds, which will contribute *nothing* to the support of the government."

In a very recent strong article in his own magazine (41 Farm and Home, No. 849, p. 6, January, 1920) headed "A National Scandal," Herbert Myrick, the reputed "Father of the Federal Loan Act," concluded:

"The weak spot can be found, even in the best of things. The federal farm loan system is no exception. The nigger in the wood pile stands revealed. *It is in the section which authorizes Joint Stock Land Banks.* * * * 'Why, the thing is a national scandal,' truly remarked Senator Knute Nelson of Minnesota in a recent conversation. The Senator spoke wisely."

This same father of the Federal Farm Loan Act has written (41 Farm and Home, No. 854, June, 1920, p. 8) this:

"The law's delays are again observable in the federal farm loan system. Its case in the United States Supreme Court is to be reargued, and decision may not be reached until the year's end. Meanwhile the whole system is shut down, because until the court decrees that federal farm loan bonds are tax exempt they cannot be sold for funds to lend to farmers on mortgage.

My opinion is that the weak link in the law is its authorization of joint stock land banks for private profit. It was a mistake to insert that section in the law. Outright repeal by Congress of that section is the only safe thing to do now. The bill favorably reported to House for liquidating the joint stocks is not enough.

The true co-operative federal land banks, purely mutual, not for profit, owned by and operated for borrowing farmers, should not be jeopardized by the section objected to.

Purchase by the treasury of \$100,000,000 of farm loan bonds issued by federal land banks (not joint stock), proposed in a pending bill, will help to tide over the present situation, but is only a makeshift. Farmers don't ask for pap, they only want their co-operative farm loan system to have a free field and no favors. Meanwhile the old-style mortgage brokers are again waxing fat, following their temporarily successful attack through the courts upon the bank system. Curious how many folks want to deprive the farmer of any good things."

Congress has, in fact, already, to a certain extent, at least, recognized that the Joint Stock Banks have no real reason for longer existence. By the Act of May 29, 1920, it is provided that they *may* be speedily liquidated. That Act (264 Fed. Rep. 503, 504) reads:

"JOINT STOCK LAND BANKS.

§9835hh. (Act July 17, 1916, c. 245, §16, as amended, Act May 29, 1920, c. ———.)
(12) Voluntary liquidation.

Any joint-stock land bank organized and doing business under the provisions of this Act *may* go into voluntary liquidation by making provision, to be approved by the Federal Farm Loan Board for the payment of its liabilities: Provided, That such method of liquidation shall have been duly authorized by a vote of at least two-thirds of the shareholders of such joint-stock land bank at a

regular meeting, or at a special meeting called for that purpose, of which at least ten days' notice in writing shall have been given to stockholder.

(13) Same; powers of Federal land bank.

For the purpose of assisting in any such liquidation duly authorized as in the preceding paragraph provided, any Federal land bank *may*, with the approval of the Federal Farm Loan Board, acquire the assets and assume the liabilities of any joint-stock land bank, and in such transaction may waive the provisions of this Act requiring such land bank to acquire its loans only through national farm loan associations, or agents, and those relating to status of borrower, purposes of loan, and also the limitation as to the amount of individual loans.

(14) Same; preceding paragraph limited.

No Federal land bank shall assume the obligations of any joint-stock land bank, in such manner as to make its outstanding obligations more than twenty times its capital stock, except by the creation of a special reserve equal to one-twentieth of the amount of such additional obligations assumed."

One, the Wichita, Kansas, Joint Stock Bank, is now understood to be in the process of liquidation under this Act.

(g) Abandoning all the reasons for the use of the Land Banks, Congress, as an apparent afterthought, conceived the notion of having established Joint Stock Banks. Had these, in the first instance, been provided for, Land Banks would have been unnecessary, and nine-tenths of the

entire Act could have been dispensed with. The government has not the slightest connection with the Joint Stock Banks, and can never have any interest therein. Individuals, not necessarily borrowers, *only* can organize, own and control same. These *alleged* banks can loan to *any one* on farm lands, in *unlimited* amounts and without *any* restrictions as to the use made of the land or to be made of the money borrowed thereon. The extent of their calling is to loan on *farm* mortgages and issue and sell their own bonds with the mortgages as security.

Not only is there a difference between the Land and the Joint Stock Banks as to the ownership and control thereof, but, in the case of the Land Banks, the loans are made to *farm* occupants in *restricted* amounts and for *specific* purposes, while with the Joint Stock Banks there are no restrictions as to amount, persons or purposes. While in this way non-cultivating farmers, or even speculators, can borrow on vacant land and on easy terms, the large investor really reaps the greatest benefit, for he, by a private investment of private funds, is permitted to go tax-free. In the practical working out of the scheme, still more pointed and detailed distinctions have been observed. The *alleged* advantages to *large* investors of *tax-free* Joint Stock Bank bonds have, *pending the litigation*, been made the subject of such advertisements as should shame even eager and keen-minded selling brokers. All this has been a subject of congressional attention, the details of

which appear in a government printed document of November 13, 1919, entitled:

"Amendment to Federal Farm Loan Act. Hearings before the Committee of Banking and Currency of the House of Representatives on H. R. 8159, a bill to amend the Act of Congress, approved July 17, 1916, known as the Federal Farm Loan Act, to increase the limit of loans."

(h) So, even if any reason can be found to sustain the Act or the tax exemption therein as to the Land Banks, there is no fair reason for so doing as to Joint Stock Banks.

The lower court (Rec. 27-29) really so recognized by saying:

"Now as to the Joint Stock Land Banks and their Farm Loan bonds, of course, I think all those present will admit that there is a possible line of cleavage between the two. That is to say, it would appear, almost, that you could take some sharp instrument and cut the Joint Stock Land Banks out of the Act, and that the Federal Land Banks and their bonds would function just the same. That is, there is no absolute connection, in so far as the system, as a system, is concerned, between the two, but it has been pointed out that these banks are to serve a different class of customers, those who require larger loans; that they have a distinct function to perform, along the same line as the Federal Land Banks.

They are incorporated into the same Act. We cannot leave out of mind that one great system is here being created, comprehensive

in its nature, containing many parts, and all so interwoven and interrelated that each performs its appointed part in the development and administration of the entire system.

It may be said—perhaps the Supreme Court may say—that they are so far separated from, and not so necessarily connected with the system that they may be taken out, taken apart, and dealt with separately, but certain it is that they are thoroughly germane to the system, and certain it is that they have been dealt with in one comprehensive, systematic plan.

That being so, it does not seem to me, when I take into consideration the fact, also, that they have been, even though arbitrarily, created depositaries of the government, created as financial agents of the government, that the arguments against them are so clear and convincing as they must be to warrant a court of first instance to overcome the presumption of constitutionality which must prevail, and to declare these Acts unconstitutional, even as to the Joint Stock Land Banks.

I am aware that in a certain very conspicuous instance, the court, in the interest of expedition, has deemed it wise to indulge the presumption of unconstitutionality in the first instance, instead of constitutionality. That is something that I cannot bring my mind to accept, and when these banks are thus designated as banks—as depositaries, and as financial agents, why, if the use is conceded in any degree, this court cannot consider the degree of their usefulness in that regard.

It stands there as the deliberate judgment of Congress that they are such, they are adapted to the use—even though their powers may have to be enlarged to make them most

useful, they are adapted to the use that Congress has assigned them. That being so, all things considered, and there being no question here, nor can be in this court, as to the wisdom and practicability of this system, then in the absence of any complete unadaptability, the court must accept their status as declared.

But whatever might be my view on these Joint Stock Banks, certainly the matter must go to the Supreme Court.

Upon one branch of the question, as I say, I am unreservedly without doubt. Upon the other, I may say, also, that I have very little, if any, doubt, although I concede that there is a more debatable question there presented, but certainly there ought not to be a division of the questions here involved.

There ought not to be any action taken which would halt a great public enterprise, certainly, as has been pointed out, to the very great disadvantage of its operation, and of the interests of parties who are dealing with it, but the whole question should be passed upon finally, as speedily as possible, and with the least inconvenience to anyone concerned, by the Supreme Court * * *."

But, after so saying, the Act was below upheld as to the Joint Stock, as well as the Land Banks. That this was possible seems inconceivable.

Respectfully submitted,

WM. MARSHALL BULLITT,
FRANK HAGERMAN,
Solicitors for Appellant.

FREE COPY

U. S. Supreme Court,
F. I. C. 100

OCT 13 1920

JAMES D. MAHER
CL.

FEDERAL FARM LOAN ACT CASE.

Supreme Court of the United States.

OCTOBER TERM, 1920; No. 199.

CHAS. F. SMITH,

Appellant,

vs.

KANSAS CITY TITLE & TRUST CO., ET AL.,

Appellees.

*Appeal from the District Court of the United States for the
Western Division of the Western District of Missouri.*

ON RE-ARGUMENT.

BRIEF FOR APPELLANT

In support of the contention that the Federal Farm
Loan Act is unconstitutional.

WM. MARSHALL BULLITT,
Counsel for Appellant.

FRANK HAGERMAN,
Of Counsel.

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FEDERAL FARM LOAN ACT CASE.

Supreme Court of the United States.

OCTOBER TERM, 1920, No. 199.

CHAS. E. SMITH,

—
vs.

Appellant,

KANSAS CITY TITLE & TRUST CO., ET AL.,

Appellees.

*Appeal from the District Court of the United States for the
Western Division of the Western District of Missouri.*

ON RE-ARGUMENT.

BRIEF FOR APPELLANT.

This case was argued January 6-8, 1920. Upon April 26, 1920, a re-argument was ordered. It is not necessary to repeat the facts stated in the brief originally filed.

The sole question involved is the constitutionality of the Act of July 17, 1916, as amended January 18, 1918 (39 Stat. 360; 40 Stat. 431), known as

THE FEDERAL FARM LOAN ACT.

The Act's elaborate provisions were so carefully analyzed in the various briefs filed upon

the former argument, that a summary statement of its salient features will be sufficient for testing its constitutional validity.

I. FEDERAL LAND BANKS.

1. The Act provides for the creation of twelve Federal Land Banks, each with a capital stock of \$750,000, which are authorized to do four things:

First: To lend money to farmers, on farm mortgages at a low interest rate, repayable in from five to forty years by small annual amortization payments.

Second: To issue and sell to the investing public, the Bank's own collateral trust bonds called "Farm Loan Bonds," secured by the individual farm mortgages.*

Third: To buy and sell United States bonds.

Fourth: To act as depositaries of public money and as financial agents of the Government, when so designated or required by the Secretary of the Treasury; but no Government money so deposited shall be invested in mortgage loans or Farm Loan

*The insignificant capital of the Banks would be quickly exhausted by the first loans and (as deposits could not be accepted,) the only way the banks could obtain funds with which to make further loans, would be by selling the mortgages they had already taken. Instead of selling the individual mortgages, the Collateral Trust Bond was adopted as more likely to prove attractive to the investing public.

Bonds, or in any other security except United States bonds.

On the other hand, these institutions while called "Banks," are prohibited from doing any of those things which constitute the very essence of a bank, to wit: each Bank is *prohibited* from accepting any deposits (except from its own stockholders, *i. e.*, Farm Loan Associations who, being organized solely and exclusively as borrowers, are not likely to be depositors to any extent), from paying any interest on deposits, from discounting paper, dealing in money, gold, silver, foreign or domestic exchange, stocks, bonds (except United States bonds), and from doing anything in the nature of a banking business, or from investing its funds in anything except farm mortgages, Farm Loan Bonds, or Government bonds; it being specifically prohibited from transacting any banking or other business not expressly authorized by the Act. (§ 14.)

Complete *tax exemption* is given; the States are forbidden to tax the Banks, the farm mortgages, or the Farm Loan Bonds, which are declared to be (§ 26)

"instrumentalities of the Government of the United States, and as such they and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation."

2. The 12 Federal Land Banks were organized; and as the public took but a small amount of the stock, the United States temporarily subscribed for nearly \$9,000,000 stock, under a provision for its gradual retirement, so that in a few years the United States will have no financial interest in the Banks, which will be owned exclusively by the borrowing farmers, thus imparting a co-operative or mutual feature to the management of the Banks.

Under that plan, over \$2,000,000 of the Government's temporary stock has been paid off; and the aggregate capital of the 12 Banks is now (October 1, 1920) about \$24,500,000, of which the United States owns but \$6,800,000.

None of the Banks have ever been designated as depositaries of public money, nor employed as financial agents of the Government, except that three of the Banks assisted in making some seed grain loans to farmers out of the President's \$100,000,000 war fund. (R. 10.)

The 12 Banks have issued about \$325,000,000 of their own collateral trust obligations called Farm Loan Bonds, of which about \$176,000,000 were purchased and are held in the Treasury of the United States under the amendments of January 18, 1918 and May 26, 1920.

In other words, the money raised by the Government for war purposes through taxation and the sale of Liberty Bonds, and the recent 6 Per Cent Treasury Certificates of Indebtedness, has, to the extent of about \$176,000,000 been devoted to the purchase of Farm Loan Bonds in order to furnish the funds to lend to farmers at very low rates of interest, and to afford a tax free investment for wealthy persons. (R. 9.)

No constitutional objection is made to this use of Government money, as it can, perhaps, be sustained under the power of appropriation.

The attack on the Act relates solely to the bonds sold to *private* investors.

The nullification of the Act as to them would *not* cause the bonds heretofore issued to be worthless or even a loss to the private holders thereof (as the farm mortgages are a valid security), but it would merely subject them to State and Federal taxation.

THE TAX EXEMPTION IS THE REAL ISSUE SOUGHT TO BE SETTLED HERE.

II. JOINT STOCK LAND BANKS.

The Act also provides that *any* ten persons can organize a Joint Stock Land Bank, which is authorized to lend money to *any person*, for *any*

purpose, in *unlimited* amounts, on farm mortgages; and that the Bank can then issue its own collateral trust bonds, called "Farm Loan Bonds, which are to be secured by the deposit with a trustee, of the original farm mortgages and notes. (§ 16.)

The Act expressly provides that the Joint Stock Banks shall have *no power* (§ 16)

"to receive deposits" or to transact any *banking* or other business not expressly authorized by the provisions of this Act."

The only business "expressly authorized" by

*While a Federal Land Bank is prohibited from accepting deposits from anyone "*except* from its own stockholders" (§§ 13, 14) the prohibition against a *Joint Stock Bank* accepting deposits is *absolute and unqualified*. (§ 16.) Hence Joint Stock Banks cannot even accept deposits from their own stockholders. Indeed the Federal Land Banks cannot accept deposits from their few individual stockholders, but only from the National Farm Loan Associations which are organized solely to enable loans to be secured, and their deposits, if any, must be invested in Farm Loan Bonds only. (§ 11.)

It has been suggested that because § 16 provides that Joint Stock Banks shall have the powers of, and be subject to the restrictions and conditions imposed on, Federal Land Banks "*except as otherwise provided,*" and "*so far as such restrictions and conditions are applicable,*" that therefore, the Joint Stock Banks are also entitled to receive deposits from their own stockholders. The power cannot be conferred upon them by any such an involved construction by reference.

A *subsequent* portion of the same section provides expressly that they shall have *no power to receive deposits*; and this prohibition is *absolute* as to Joint Stock Banks, while it is expressly *qualified* as to Federal Land Banks by permitting the latter to receive deposits from their stockholders. Therefore Joint Stock Banks do *not* have the same power as Federal Land Banks with respect to deposits.

the Act (except to lend on farm mortgages and to issue its bonds secured thereby) is (1) that they may buy and sell Government bonds, which anyone may do; and (2) a potential possibility of acting as depositary or financial agent for the Government under § 6, which was inserted in an effort to make the Act constitutional.

27 Joint Stock Banks have been organized, with \$8,000,000 capital stock which is wholly owned by *private persons*, who are operating them "*purely and exclusively for their own individual and private profit as in the case of any other purely private corporation.*" (R. 5, 9.)

None of those Banks have ever been designated as depositaries of public money nor have they ever performed any duties as financial agents of the Government. (R. 10.)

The Federal Government can never have any financial interest in these Banks; nor can the Banks receive deposits, discount paper, lend money, deal in gold, silver, stocks, bonds (except U. S. bonds), foreign or domestic exchange, or do any of the other things which constitute a banking business.

They have taken \$80,000,000 of farm mortgages, and have issued against them about \$60,000,000 of Farm Loan Bonds.

Nevertheless, the mortgages taken and the Farm Loan Bonds issued by these exclusively private money lending companies, are wholly exempted from every form of State and Federal taxation, § 26 providing that they

"shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation."

How can (a) farm mortgages executed to a privately owned corporation and (b) the latter's obligations when held by private investors, be deemed "*instrumentalities of the Government of the United States,*" and, hence, with the income therefrom, be exempt from State taxation?

Can the constitutionality of an Act authorizing private individuals to engage in the private business of lending on farm mortgages for private profit, be sustained (and their obligations when sold and owned by private investors, be exempted from all State taxation) by the simple expedient of calling them "*instrumentalities of the Government*" and of authorizing the Secretary of the Treasury to use them as Government depositories or financial agents, although he has

never in fact so used them? If so, what limit remains on the powers of Congress?

The Joint Stock Banks while *more* limited in their *banking* powers (because they cannot receive any deposits) than even the Federal Land Banks, yet have much *broad*er powers than the latter for *lending* on farm mortgages; and it is apparently only a question of a short time until the Joint Stock Banks will have monopolized the field from the Federal Land Banks. (Report, Secretary of Treasury, 1919; Finance, p. 137.)

The Meaning, Purpose and Object of the Act.

1. The Reports of the Committees, the Debates in Congress, the Government's authorized announcements, and the Briefs of opposing counsel on the former argument, all unite in the declaration that the sole meaning and purpose of the Act was to enable *private investors* to furnish money on farm mortgages at *low* interest rates and on long terms of repayment, or, as more tersely expressed, cheap money on easy terms on farm mortgages.*

*See the Appendix to Mr. Bullitt's Brief on the former argument. Senate Report No. 144, 64th Cong. 1 Sess.; House Report No. 630, p. 2, 64th Cong. 1 Sess.; 53 Cong. Rec. 7228, 7246, 6793; Farm Loan Board's Circulars Nos. 1, 2 and 3; Farm Loan Primer, p. 3; 1st Annual Report of Farm Loan Board, pp. 13, 17, 22; Brief of Judge HUGHES p. 16; Messrs. WICKERHAM and McADOO p. 19; U. S. as *amicus curiae* pp. 12, 18.

2. The *object* of the Act (sought to be obtained through those means), was, as stated at the former argument by the counsel supporting its validity,

To foster, promote and stimulate the development of agriculture by the actual cultivation of the soil in a systematic manner throughout the country (Hughes, pp. 7, 16, 22, 45, 50, 54; Wickersham, pp. 19, 38).

3. But as the Constitution contains no *express* power for Congress (a) to stimulate or develop agriculture, (b) to regulate farm mortgages or to provide the means for securing low interest rates thereon, or (c) to create a corporation for the purpose of lending on farm mortgages, or issuing its bonds secured thereby,—the first inquiry is whether the power to pass the Act is *incident* to some express power and appropriate to its execution; and, if so, what power? (*U. S. v. Harris*, 106 U. S. 629, 636; *Kansas v. Colorado*, 206 U. S. 46, 87-90; Cases collated in Brief submitted on reargument by Mr. Hagerman at pp. 29-42.)

4. The only powers of Congress which have ever been suggested as even remotely authorizing the Act are:

1. "To lay and collect taxes," with its

implied power "to appropriate" public money. (Art. I, § 8, clause 1.)

2. "To borrow money on the credit of the United States." (Id., clause 2.)

3. Those under which the National Banking System was created.

The arguments in support of the Act which are based on those powers will now be critically examined.

SUMMARY OF POINTS DISCUSSED.

FIRST POINT.

The Farm Loan Act, so far as it creates Federal Land Banks, is unconstitutional because Congress has no power to create a corporation for the purpose of conducting a farm mortgage loan business, or to exempt it from State control; and its constitutionality cannot be saved by treating it as an exercise of the congressional power (1) to appropriate money, or (2) to borrow money on the credit of the United States.

SECOND POINT.

Congress could not acquire the power (1) to create a series of corporations (Federal Land Banks and Joint Stock Land Banks) to engage in the business of lending private capital on farm mortgages, and (2) to exempt them from all State control, by the mere expedient of calling such corporations "Banks" and endowing them with the possibility of acting as depositaries of public money or financial agents.

THIRD POINT.

The farm mortgages executed to the Federal Land Banks and to the Joint Stock Land Banks, and the farm loan bonds issued by them respectively, and held by the general investing public, are subject to State taxation.

ASSIGNMENTS OF ERROR.

The Court erred in sustaining the constitutionality of the Federal Farm Loan Act, especially as applied to the tax exemption of Farm Loan Bonds. (R. 33.)

FIRST POINT.

The Farm Loan Act, so far as it creates Federal Land Banks, is unconstitutional because Congress has no power to create a corporation for the purpose of conducting a farm mortgage loan business, or to exempt it from State control; and its constitutionality cannot be saved by treating it as an exercise of the congressional power (1) to appropriate money, or (2) to borrow money on the credit of the United States.

The Government's principal argument in support of the Federal Land Banks is based upon the taxing power and the power implied therefrom to "appropriate" money; and it arises from the *accidental* fact that the Government temporarily subscribed for most of the capital stock of the Federal Land Banks after the general public had refused to take it.*

*Since then the Government's stock has been considerably retired, *while the private shareholders have increased until they hold nearly three times the value of the Government stock.* The aggregate capital stock is about \$24,500,000 of which the United States owns only \$6,800,000.

Before dealing with that contention it will be desirable to consider the nature and extent of Congress' power to tax and consequently, to appropriate money.

THE EXTENT OF CONGRESS' POWER TO APPROPRIATE MONEY.

Art. I, § 8, Clause 1, of the Constitution provides:

*"The Congress shall have Power To lay and collect Taxes, * * * to pay the Debts and provide for the common Defense and general Welfare of the United States."*

1. Although originally the subject of much discussion, it may be considered as settled that the italicized words did not confer on Congress any substantive power to provide for the country's general welfare, nor are they merely harmless introductory words limiting the subsequently enumerated powers.

The accepted view is that Congress has power to lay and collect taxes *for the purpose of* paying the debts and providing for the common defense and general welfare, thereby *qualifying the objects* for which taxes may be laid.*

* (Federalist No. 41; Jefferson's "Opinion on the constitutionality of a National Bank," Feb'y 15, 1791; Jefferson's letter to Gallatin, June 16, 1817; Madison's veto of the Bonus Bill, March 3, 1817; Monroe's veto of the Cum-

2. The views of Mr. HAMILTON, in his Report on Manufactures, have prevailed in actual practice, namely, that Congress can appropriate money raised by taxation for any purpose or object which it deems conducive to the *general* (as distinguished from *local*), welfare; and such action is almost, if not entirely, beyond the control of judicial power. While practically there are few, if any, limitations on the power of Congress to *appropriate* money, all the authorities are agreed that the power is *exhausted* upon the application of the money.

Mr. HAMILTON, in his Report on Manufactures (December 5, 1791) said:

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an*

berland Road Bill, and his "*Views of the President of the United States on the subject of Internal Improvements*" May 4, 1822; Madison's letter to Stevenson Nov. 17, 1830; 3 Farrand's Records of Federal Convention 483; Story on Constitution, §§ 907-930; 1 Willoughby on Constitution §§ 22, 269; 1 Tucker on Constitution, §§ 222-223; 1 Hare's Am. Const. Law, 241-242; 1 Watson on Constitution 398; 10 Fed. Stat. Ann. 403 and authorities cited; *Van Brocklin v. Tennessee*, 117 U. S. 151, 158.)

*application of money. * * ** No objection ought to arise to this construction, from a supposition *that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted, too, in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication."*

President MONROE, in his "*Views of the President of the United States on the Subject of Internal Improvements*" accompanying his veto of the Cumberland Road Bill (which is universally conceded to be the most thorough and elaborate view which has ever been taken of the subject of Congress' power to appropriate money) was of the opinion that Congress could appropriate money to any purpose which it deemed conducive to the general welfare, *but that it could go no further than to appropriate the money and could not undertake the projects to which the money was applied.*

After disposing adversely of Mr. MADISON's contention that the power of appropriation was limited to the execution of the powers enumerated or implied therefrom, Mr. MONROE said (II Messages and Papers of the Presidents, p. 167):

"If, then, the right to raise and appropriate

the public money is not restricted to the expenditures under the other specific grants according to a strict construction of their powers, respectively, is there *no limitation* to it? Have Congress a right to raise and appropriate the money to any and to every purpose according to their will and pleasure? They certainly have not."

He then argues that the money can be appropriated to any great national purpose including good roads, canals, foreign concerns, and says (p. 168):

"The right of appropriation is nothing more than a right to apply the public money to this or that purpose. *It has no incidental power, nor does it draw after it any consequences of that kind.* All that Congress could do under it in the case of internal improvements would be to *appropriate* the money necessary to make them. **For every act requiring legislative sanction or support, the State authority must be relied on.** The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work when finished must be done by the State. To these purposes the powers of the General Government are believed to be utterly incompetent."

In his accompanying veto message Mr. MONROE said:

"A power *to establish* turnpikes with gates and tolls, and to enforce the collection of tolls

by penalties, *implies a power* to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the proprietor on a valuation and to pass laws for the protection of the road from injuries, and if it exist as to one road it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to legislate for the others. It is a complete right of jurisdiction and sovereignty for all the purposes of internal improvement, *and not merely the right of applying money under the power vested in Congress to make appropriations*, under which power, with the consent of the States through which this road passes, the work was originally commenced, and has been so far executed.

I am of opinion that Congress do not possess this power; that the States individually cannot grant it, *for although they may assent to the appropriation of money* within their limits for such purposes, they can grant no power of jurisdiction or sovereignty by special compacts with the United States. This power can be granted only by an amendment to the Constitution and in the mode prescribed by it."

ANDREW JACKSON, in vetoing the Maysville Road Bill, said with reference to the appropriation of money (*Id.*, p. 488):

"No aid can be derived from the intervention of corporations. The question regards the

character of the work, not that of those by whom it is to be accomplished."

Mr. MADISON, in vetoing the Bonus Bill on March 3, 1817, said (Id., Vol. I, p. 584):

"A restriction of the power 'to provide for the common defense and general welfare' to cases which are to be provided for *by the expenditure of money* would still leave within the legislative power of Congress all the great and most important measures of Government, *money* being the ordinary and necessary means of carrying them into execution."

In 1 Willoughby on the Constitution, it is said (Sec. 269):

"In fact, however, the limitation that an appropriation should be for a public purpose has been without practical effect, as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and, as regards the restriction that appropriations shall be in aid of enterprises which the Federal Government is empowered to undertake, the doctrine has become an established one that Congress may *appropriate* money in aid of matters which the Federal Government is *not* constitutionally able to administer and regulate."

In 1 Hare's American Constitutional Law, pages 241-250, there is an admirable review of the whole subject, including many of the his-

toric instances involving the appropriation of money by Congress. He points out that the construction of railways, high roads, bridges and other internal improvements is derivable, *not* from the power to *appropriate money*, but from the war, postal and commerce powers. Referring to certain appropriations it is said:

"In the greater number of the instances above referred to, the government did not act in its sovereign capacity, *but like a rich and public-spirited individual who draws his purse-strings for the common good*; and therefore they do *not* tend to show that Congress may, by virtue of the eighth section of the first article, devise internal improvements and enact such laws as are necessary and proper to render the scheme effectual.

It is one thing to construct a highway by virtue of the power of eminent domain, and exercise an absolute jurisdiction over it when made, *and another to lay out a road through land acquired by purchase with the consent of the state through which it passes*. So Congress may well be entitled to *appropriate money* for public education, or even to build and endow colleges and schools, *and yet want the right to make attendance, compulsory and enforce it by fines or penalties.*"

It is also said:

"In other words, although the United States may go into the market and do whatever can be done by the use of money without the exercise

of legislative, executive, or judicial power, they cannot, speaking generally and where there are no special grounds, do more."

In Tucker on the Constitution, Vol. 2, §§ 222-234, there is an elaborate consideration of the entire subject; and it is pointed out that if Congress, under the power of appropriation can supervise and intervene in the administration of the project to which the money is applied, our Government would be exercising a power not conferred upon it.

3. The extent of the power of appropriation has never been determined by this Court. (*Field v. Clark*, 143 U. S., 649, 695; *U. S. v. Realty Co.*, 163 U. S., 427, 433.)

But, for the purposes of this argument, we shall concede the right of Congress to appropriate public money to any purpose it may desire.

We shall, however, insist that the implied power to *appropriate* for the general welfare is limited to the *disbursement* of money, with such machinery for its application to the desired end as may be used *without the exercise of Federal power to abridge the reserved rights of the States or of the citizens thereof.*

The Government's argument is this:

I. That the agricultural interests of the country are of public national concern and relate directly to the "General Welfare"; that Congress has the power to appropriate the public money to such purposes; that long time farm loans at low interest rates stimulate the cultivation of the soil and secure agricultural development; and that hence Congress can appropriate money in order to lend it to farmers at low interest rates.

That the power of appropriation implies the right to create corporations as a proper means for making the appropriation effective; that the \$9,000,000 temporary subscription by Congress to the capital stock of such corporations was simply an appropriation of public money to be loaned to farmers at low rates of interest.

That, under the power of appropriation, Congress can endow the corporation not merely with the powers necessary to carry out the Congressional appropriation itself, but also with such other powers as Congress may deem it desirable to confer, including the right to raise money from the investing public to be loaned by them to the farmers; that even in respect of such *private* operations the corporations so formed are

instrumentalities of the Federal government for carrying out Federal purposes; that, as such, neither the property nor the operations of such corporations can be taxed by the States; and that all mortgages executed to, and all bonds issued by, such corporations, *and held by private investors*, are instrumentalities of the Federal government, and exempt from State taxation. (See pp. 24-47, 81-102, *infra*.)

II. That under the power "to borrow money on the credit of the United States," Congress could authorize these corporations to borrow money from the public, and lend it on farm mortgages; and that the bonds held by the public could be exempted from State taxation. (See pp. 48-54, *infra*.)

III. That under the principles authorizing the creation of National Banks, Congress could create these corporations instrumentalities of the Government to act as possible depositaries of public money, or financial agents, and thereby authorize their issuance of Farm Loan Bonds. (See pp. 54-81, *infra*.)

We submit:

1. *The implied power of appropriation does not authorize the creation of Federal Land Banks to lend private capital on farm mortgages, nor the exemption of its obligations in private hands from State taxation.*

1. Never before in our constitutional history has it been suggested that the power to create a corporation could be deduced from the power of appropriating public money.

The United States subscribed largely to the capital stock of both the First and Second Banks of the United States. But neither HAMILTON, WEBSTER nor MARSHALL suggested that the creation of the Bank could be sustained under the power of appropriation, which was then, as here, exercised by a subscription to the Bank's capital stock; although, in the case of both Banks of the United States, the Government's subscription was absolute and permanent, whereas here it was purely accidental, *conditioned* on the public not subscribing for the stock, and *temporary*, as it is now in the process of rapid retirement. If the Government's argument were valid, would it not have occurred to some of those great minds?

It has never been mentioned in any work on Constitutional Law, so far as our reading goes. The Congressional Debates and Committee Reports (1915-1916) show that it was never relied

on, though many minds were seeking for some constitutional power on which to base the Act. It was first propounded on May 4, 1917 in an opinion by a distinguished lawyer rendered to a banking syndicate, in support of the tax exemption feature of the Farm Loan Bonds.

The fact that the power of appropriation has never before been relied on to support the authority of Congress to create a corporation is persuasive evidence that the *power of appropriation* cannot authorize the creation of these corporations, nor indeed *any* corporation except possibly one to *disburse* the money appropriated.

2. In every past instance, where Congress has created a corporation to engage in any activity, whether it be the construction or operation of railroads, the manufacture of ordnance or explosives, the building of a merchant marine, the improvement of navigable rivers, or the business of banking, the implied power to create it arose from some *express* power conferred upon Congress, such as to tax, to declare war, to regulate commerce, etc.

3. The Government contends that a corporation is merely a *means* selected for the execution

of a power by Congress. If Congress may *create* a corporation for this purpose, *a fortiori* it may use a corporation already created. (*U. S. v. Jones*, 109 U. S. 513, 520; *Holmgren v. U. S.*, 217 U. S. 509, 517; *Mulcrevy v. San Francisco*, 231 U. S. 669, 674.) The question is whether a corporation being selected incidentally as the *means* of effecting an appropriation, can be exempted from State taxation. If Congress appropriates money to better the morals of the people, it is certainly a public purpose. Can it, by giving \$100,000 to the Salvation Army, the Y. M. C. A., Parochial Schools, or the Anti-Saloon League, thereby acquire the power to say, when the States can, or can not, tax those institutions?

This is not a fanciful suggestion. For more than 40 years, Congress has appropriated \$10,000 annually (20 Stat. 467; raised to \$50,000 August 4, 1919) to be paid to a Kentucky corporation, "American Printing House for the Blind," to assist in providing books for the blind.

Has Congress the power by virtue of this appropriation to exempt the "American Printing House for the Blind" from State taxes? And can it exempt from State taxation the bond and

mortgage representing capital loaned by private investors to the Kentucky corporation in order to purchase new property and to extend its factory.

4. In order to carry out the power of appropriation, Congress need not have created a corporation. It might have loaned the appropriated money directly to farmers through one of the Government bureaus. In that event, if the Government's contention is correct, it could have provided that all money loaned on farm mortgages should be exempted from State taxation.

If the power of appropriation authorizes Congress to exempt from State taxation the bonds and mortgages of the capitalist, it could equally have exempted from State taxation the farm lands. A State has as complete control over personal property within its limits as it has of real estate. If Congress can exempt the personal property (bonds and mortgages) from taxation, it can also exempt the land itself.

Throughout the Government's briefs, it is argued that the public purpose to be served by this Act is the encouragement and benefit to be given the farmer to induce him to cultivate the soil,

whereas the benefit of the tax exemption privilege inures *directly* to the bond holders, the private banker, and the mortgagee; and only *indirectly* to the farmer as the result of the bonus to his creditor. If Congress obtains the right to grant tax exemption by reason of the appropriation, and the appropriation was made to help the tiller of the soil, could not Congress also give exemption to the mortgagor, by providing, for instance, that the amount of the outstanding mortgage should be deducted from the assessed value of his land, for the purpose of State taxation? And yet, if Congress should attempt to provide that the States could not tax farm lands, would any court think of sustaining such an Act?

The development of agriculture is a public purpose; can Congress provide that all the crops raised from seed distributed by Congress shall not be taxed by the States?

The title of the Act does not indicate that it was intended primarily to benefit the farmer. The capitalist and the mortgagor is the one who reaps the benefit, if the title of the Act is a summary of its meaning. The farmer is not so much interested in the creation "of a standard form

of investment" in the form of a tax exempt bond, as is the money lender.

CONGRESSIONAL APPROPRIATION ACTS.

5. The Government has cited, with much apparent confidence, a long list of Congressional Acts appropriating aid to agricultural development.*

Although no constitutional support for the Farm Loan Act can be found in these various appropriation acts, they are of the greatest im-

*Most of the acts were simple appropriations of money for the "collection of agricultural statistics"; "to collect and report information"; for "investigating" the extent that arid lands might be redeemed by irrigation; "to conduct inquiries and scientific and technologic investigations"; "to inquire into the economic conditions"; "to investigate mineral fuels and unfinished mineral products belonging to, or for the use of, the United States"; "to buy and distribute seeds"; to print and distribute pamphlets. (5 Stat. 354; 9 Stat. 102; 11 Stat. 226; 12 Stat. 387; 12 Stat. 503; 12 Stat. 691; 21 Stat. 276; 23 Stat. 31-32; Id. 355; 25 Stat. 960; 26 Stat. 653; 34 Stat. 690; 37 Stat. 681; 39 Stat. 446-476; Id. 1134-1166; 40 Stat. 374; Id. 973-993); in the execution of all which acts, no power was withdrawn from the States or from the people; nor was the Federal government exercising any power thereunder which was not possessed by any individual merely engaged in spending money. Some of the acts cited were passed in pursuance of the express power to regulate commerce (23 Stat. 31, 355; 39 Stat. 446-476) or to declare war. (40 Stat. 374.) But where the expenditure of money also involved executive action that might operate upon persons or property within the State, it was provided that action should be taken "*in co-operation with the States concerned*" (40 Stat. 374; 39 Stat. 1166, 1167); while the appropriations under the Morrill Land Grant Act of 1862, were expressly conditioned upon "*the previous assent of the several States signified by legislative acts?*"

portance as illustrating the radical nature of the Government's contention.

The Government's argument is that under the power of appropriation, Congress can not only appropriate public money to accomplish a public purpose, but as an incident thereto, acquires such a dominion over the subject matter as entitles it to withdraw from State control the property of private persons devoted to the same public purpose; and, therefore, that Congress by appropriating money for loans to farmers in the hope of stimulating the cultivation of the soil, was authorized to withdraw from the taxing power of the States, money applied by private citizens to the same purpose.

If that argument be valid, let us see where it leads:

(a) Instead of exempting from State taxation the capitalist who furnishes the money to be loaned to the farmer, could not Congress have equally exempted the farmer himself from State taxes upon his land, at least to the extent of the mortgage? This would deprive the State of the power *pro tanto* to tax the land itself. If Congress can prevent the State from taxing the capitalist who really *lends* the money on the farm, it surely could permit the State to tax the cap-

italist, but *prevent* the State from taxing the farmer on the land itself, to the extent that the capitalist was taxed on the mortgage.

(b) When, in 1906, Congress appropriated enormous sums to prevent and suppress Smallpox, Yellow Fever and Cholera (36 Stat. 709) did Congress thereby acquire the right to prevent New York from taxing the funds of the Rockefeller Foundation similarly devoted to that precise purpose?

When Congress appropriated more than \$1,000,000 for the relief of the floor sufferers (37 Stat. 633), could it have provided that all of the assets and funds of private agencies devoted to the same relief work, should be exempted from State taxation?

When Congress appropriated \$3,500,000 for the eradication of the Foot and Mouth Disease, including payment for animals destroyed (39 Stat. 492, 1167; 40 Stat. 1006), could it have provided (a) that the funds of the Rockefeller Institute devoted to the same purpose should be exempted from State taxation? or (b) that the States could not exercise control over the animals affected with that disease, merely because Congress had appropriated money to deal there-

with, or (c) that Federal officials might kill any diseased animals?

When Congress appropriated money "to investigate explosives and peat" (37 Stat. 681), could it provide that all money employed by private persons in similar investigations should be exempt from State taxation? Or when Congress appropriated money "for the introduction and protection of insectivorous birds" (12 Stat. 691) could it provide that all such birds owned by private persons should be exempt from taxation, or could it prescribe the open and closed seasons therefor?

When Congress appropriated money for the "improvement of tobacco and the methods of tobacco production and handling" and to "encourage the adoption of improved methods of farm management and farm practice," and for the "improvement of grasses, alfalfa, clover and other forage purposes" (38 Stat. 422-3), did Congress thereby acquire such control over tobacco, the methods of its production and handling, farm management, grasses, etc., as to authorize it to provide that all funds employed by private persons in a State for the production and handling of tobacco should be exempted from State taxation, or that private funds used

for the improvement of farm management should also be exempted from State taxation?

The Government's position cannot stop with the mere exemption of money from State taxation. If Congress, by the appropriation of money to a given purpose, acquires the right incidentally to control the application of other money to the same purpose, it can only be because Congress has thereby acquired jurisdiction over the purpose itself; and its power is not limited to the mere withdrawal of the State taxing power from the private funds devoted to it, but it may also withdraw the other powers of the State over such purpose and may introduce Congressional regulations over the whole subject.

(c) The Government's attempted distinction between the application of money and the control of the industry itself, is wholly illusory. If Congress can exempt mortgages and bonds representing loans by third persons to farmers, then, by an exact parity of reasoning, by appropriating money to be expended on some particular activity, Congress can provide that the States shall do nothing to interfere with private individuals doing the same thing that Congress was doing by appropriation. The Government's

argument is substantially that because Congress has appropriated money to be loaned on farm mortgages, it has monopolized to itself the field of farm mortgage lending to the extent of being able to prescribe that the States shall not interfere with that business when conducted by private individuals.

If Congress has the right to withdraw the State's great power of taxation from farm mortgages and the funds secured thereby, why may it not also withdraw from the power of the State the recording of mortgages, the procedure relative to the foreclosure thereof, and prescribe the foreclosure of farm mortgages and vest it exclusively in the Federal Judiciary?

6. While the power of appropriation would possibly authorize the creation of a corporation *to carry out the appropriation, i. e.,* the actual *application* of the money, yet it would not authorize the company to engage in forms of activity other than appropriate for the expenditure of the money nor afford a medium for the investment of purely private capital in private enterprises, such as farm mortgages. If a corporation may be the means by which appropriated money is disbursed, surely it cannot be used for

the purpose of enabling private individuals to lend their money to other private individuals.

It will always be borne in mind that we are here dealing only with the *power of appropriation* and not with those very different powers upon which the National Banking System was founded and for the beneficial accomplishment of which it was necessary to permit the banks to engage in private business. (See pages,, *infra*.) The power to create ordinary banks was not based on the power to appropriate money nor to provide for the general welfare, but was based upon the necessity of carrying on the fiscal operations of the government in exercise of its powers to tax, to declare war, etc. How can it be said that the creation of a corporation for the employment, on a gigantic scale, of *hundreds of millions of dollars* of private capital in the farm mortgage business is plainly adapted or really calculated to effect the appropriation of the \$9,000,000 which the government temporarily subscribed to the capital stock?

In *McCulloch v. Maryland*, it was said, page 423:

“Should Congress under the pretext of executing its powers pass laws for the accomplishment of objects not intrusted to the Govern-

ment it would become the painful duty of this tribunal . . . to say that such an act was not the law of the land."

Under the *pretext* of executing its power to appropriate money is not Congress seeking to create a machine by which one class of citizens can lend money to other citizens and be exempted from the operations of State laws with respect thereto? The money-lending business was never intrusted to the Government.

In *Osborn v. Bank*, 9 Wheat., 738, at 861, it was distinctly held that if the Bank could carry out the purposes of the Government as competently *without* the right to do private business, as it could *with* such right, there would be great difficulty in sustaining the private features of the charter. Certainly a corporation organized for the purpose of carrying out the *appropriation* of public money could do so *without* the addition of the private business of farm mortgage lending.

7. Besides agriculture, there are many other subjects of national concern, such as education; the insurance of lives against death, disability and disease; the protection of property from fire; the conservation of natural resources; personal morality; the alleviation of poverty; and

the relations between society and organized labor—all of them are matters of internal policy exclusively reserved to the States.

If Congress, under the power of appropriation, temporarily exercised to a limited amount, can create a great system of private money lending, let us consider to what extent the power may be carried.

Life and Fire Insurance. Certainly the protection of property against fire and lives against death is a matter affecting everyone. By a small temporary appropriation to capital stock, can Congress acquire the power to create gigantic life and fire insurance companies in which private capital can find investment, where the corporation will furnish money to persons suffering losses from fire or death, in return for low premium rates? Would all the immense capital thus invested, and the payments received from the members and the investments thereof be exempted from State taxation? Would payments made by the corporation for death and fire losses, also be exempted from taxation including state inheritance taxes?

At the argument, the Government insisted that the Farm Loan Banks did not regulate any

matter reserved to the States, but only related to the *application of money*. It will be observed that such an insurance corporation is purely a *financial* one, doing nothing except to *receive and disburse* money.

Relief of China. Congress appropriated money for the relief of sufferers from famine in China (36 Stat. 919); and it might have created a corporation to expend that money in China. Could it have permitted private individuals to lend through that corporation vast sums to the Chinese for relief of the famine, to have taken mortgages on Chinese property, and to have exempted the principal from taxation by the States?

Public Disasters. In the case of the San Francisco earthquake Congress (1) appropriated \$2,500,000 public money for the benefit of those whose property was destroyed, (§ 34 Stat. 644, 827), and (2) could have administered that relief through the medium of a corporation whose capital was subscribed by the Government; but could it provide that private individuals (a) might take stock in the corporation, and (b) also organize an independent corporation wholly owned by such private individuals; and that the two corporations thus organized

could lend money for the rebuilding of the destroyed districts, take mortgages therefor, issue collateral bonds against them, all of which should be exempted from State taxation?

Poverty, Unemployment and Industrial Relations. The development of our agricultural interests does not more clearly affect the general welfare, nor is it a more important public purpose than the alleviation of poverty and unemployment, and the maintenance of proper relations between capital and labor.

Congress appropriated large sums to be spent by a Commission to inquire into the general conditions of labor, agriculture, strikes, wages, health and other conditions existing between capital and labor (32 Stat. 758; 37 Stat. 415).

Instead of conducting this appropriation through a Commission, it might have done it through the medium of a corporation organized for the purpose, where the money appropriated constituted the capital stock. Could Congress under this alleged power of appropriation have authorized philanthropists to organize corporations by which immense sums of private capital might be devoted to those objects, including loans to the poor or unemployed, either without

security or secured by chattel mortgages, assignments of salaries, or of future earnings, etc., and could Congress have exempted from State taxation the capital thus invested in the notes taken. Or could Congress have authorized such philanthropists to have employed their funds through the medium of the corporation administering the appropriated public money and thus be exempted from State taxation?

Education. Everyone will admit that education no less than agriculture is a matter of national concern and welfare. Could Congress, by a similar temporary appropriation for capital stock, authorize the creation of a corporation to promote the cause of universal education, authorized to lend money at low rates to all persons building or operating school houses, colleges, technical or professional schools, securing the money by mortgages on the plants and on the tuition fees of the students? Could Congress exempt such bonds and mortgages from State taxation?

Could Congress have authorized Mr. Carnegie, Mr. Rockefeller and their associates to invest vast sums in mortgage loans through such corporation on the educational, technical and professional schools of the country, and exempt the

loans from State taxes? Could it thereby authorize those rich gentlemen to create a joint stock company with hundreds of millions of capital to be loaned or otherwise expended in building libraries and colleges, and in assisting persons engaged in educational work and to withdraw from State taxation all such funds, together with the mortgages executed in return for the loans?

Irrigation of Arid Lands. The irrigation of arid lands is a public purpose (*Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112; *Hauck v. Little River Dist.*, 239 U. S. 254.) Could Congress, in order to stimulate the irrigation of arid lands (not public lands), authorize the creation of two classes of Irrigation Banks, one to which Congress would make a small temporary subscription for capital stock, and the other wholly organized by private individuals? And could it authorize those Banks to issue irrigation bonds secured by mortgages upon the proposed irrigated lands, which mortgages and the bonds should be exempt from State taxation? If so, what would become of the principles on which *Kansas v. Colorado*, 206 U. S. 46, 87-89, was based?

Conservation of Natural Resources. The con-

servation and development of coal, timber, water power, etc., are matters of great concern directly affecting the general welfare. Can Congress by small, temporary subscriptions to capital stock, authorize the creation of a "Conservation and Development Bank" to be engaged in the business of lending money at low rates to persons owning mines, coal and timber lands, water power rights, etc., taking mortgages therefor and issuing its collateral bonds against them, which mortgages and bonds, as well as the huge private investment, shall be exempt from all State taxation? Could Congress, without appropriating any money, also authorize private capital to organize Joint Stock companies to engage in the same business, exempting the bonds and mortgages from taxation?

Child Labor. Congress cannot regulate child labor. (*Hammer v. Dagenhart*, 247 U. S. 251.) Can Congress, under the power of appropriation, create a corporation in which private capital would have the principal investment, for the purpose of discouraging child labor in factories, by lending money at low rates of interest to those factories who would refuse to employ child labor? Could Congress exempt from State taxation the loans thus made and the mortgages

thus taken and the bonds issued against them? If so, the Congressional appropriation soon being returned to Congress (as the farm loan appropriation is being returned) we would shortly have huge mortgage lending companies assisting factories all of whose operations and investments would be exempt from State taxation.

Suppression of Vice and Elimination of Venereal Disease. Congress has no power to suppress Houses of Ill Fame. (*Keller v. United States*, 213 U. S. 138.*)

Can Congress, by the same expedient of a trifling appropriation, permit Mr. Rockefeller and his associates to organize a corporation having for its object the suppression of vice and the elimination of venereal disease, by means of loans at low rates, or bounties paid, to immoral people in order to assist them in abandoning their vicious careers and getting a new start in life?

Would the capital thus invested, the loans taken from the unfortunate people, and the bonds issued thereon be exempted from State taxation?

Manufactures. Whatever concerns manufactures is within the sphere of Congressional ac-

tion as far as regards the application of money (Hamilton's Report on Manufactures, December 5, 1791).

Congress could appropriate \$9,000,000 temporary capital to start a corporation for the purpose of making cheap loans on factories or to encourage the building of new factories; but could it provide that the hundreds of millions of dollars of capital constantly invested in mortgages on industrial plants, might be loaned on the factories of the country by our capitalists through such a corporation, and that the bonds should be exempted from all State taxation?

Furthermore, as incidental to the corporation just mentioned, could Congress authorize our capitalists to organize an unlimited number of Joint Stock Factory Banks, through which they could lend their money to the industries of the country and exempt the loans from all State taxation?

Once concede that Congress has the power here claimed for it, and there is nothing to prevent Congress from extending the same system to all public utilities, department stores or any other matter of vital interest to the people.

We do not suggest any limitation upon the

power of Congress voluntarily to apply Federal money to the aid of any situation which Congress deems it wise to assist, but our criticism is that under the power of appropriation Congress cannot authorize private individuals to embark upon the same business and exempt them from the powers of the States, where such business bears no substantial relation to the execution of some Federal power.

8. The fallacy underlying the Government's entire argument is that it erroneously *assumes* that Congress has the power to provide financial aid for farmers in order to stimulate agriculture—as if that were a substantive power granted by the Constitution—from which erroneous assumption it deduces the logical conclusions (a) that Congress can furnish such aid in any way it deems best, and (b) that the means adopted in its discretion are Federal instrumentalities and consequently exempt from State taxation.

But it needs no argument to demonstrate that Congress has no power (in the sense used in the Government's argument) *to provide financial aid for the stimulation of agriculture*. No such power was given it by the Constitution. It may appropriate its money to that end and in only

that ambiguous sense has it the "power" to aid agriculture.

The fallacy lies in an erroneous assumption based upon the ambiguous use of the word "power."

The following quotations from Judge HUGHES' brief on the former argument reveal the fallacy in the use of the word "power."

"Congress having power to provide financial aid in order to stimulate agricultural development throughout the country, could organize the means for providing this financial aid in any appropriate manner according to its judgment." (p. 54.)

Congress has power to *appropriate* money, but it has never been given the constitutional power to *stimulate agriculture* as a substantive power.

Again:

"Congress was entitled in its discretion to establish the Federal Land Banks as means for the accomplishment of its end in providing financial aid to stimulate agricultural development in a systematic manner throughout the country." (p. 57.)

"If Congress had the power to organize financial aid in order to stimulate agricultural development," etc. (p. 58.)

This shows that the Government *deduces the power to establish the banks* from the supposed

constitutional power to provide and organize financial aid for agriculture. That the Government's subscription to the capital stock is not defended as a mere *means* of appropriation, but as an incident to an alleged precedent power *to establish the Banks*, is shown by the following quotation:

"Having power to establish these banks, it was competent for Congress to provide that the Treasury should subscribe to their capital stock. The banks were lawfully created and the stock could be taken as a lawful investment of public funds." (p. 57.)

In that argument the Government has placed "the cart before the horse." It might create a corporation in order to subscribe to the capital stock as a means of dispensing money appropriated to a particular object; but certainly the power of appropriation would not authorize it to create a corporation for any purpose other than the application of the money appropriated.

According to the Government's argument, as revealed in the above quotation, Congress might have established the banks and *never have subscribed for the stock at all*. If the Act had never provided for *any* Government subscription to the capital stock at all, we submit that there would have been no possible basis for the creation of the corporation.

2. *The power to borrow money on the credit of the United States does not authorize the issuance and sale of Farm Loan Bonds to private investors, nor the exemption thereof from State taxation.*

The Government contends that Congress has the power

"To provide for bond issues to raise additional moneys, to be used in a general and systematic manner throughout the country to stimulate the cultivation of the soil." (Judge HUGHES' Brief, pp. 22, 50, 51, 54, 58.)

This may be true, but only in the sense that Congress could authorize the issuance and sale of Government obligations and apply the proceeds in aid of agriculture.* That is not the case presented here.

How can it be said that the Farm Loan Bonds represent, in any way, the exercise of any power by Congress "to borrow money on the credit of the United States?" (Art 1, § 8, clause 2.)

1. Congress did not borrow the money. The

*It is possible that money so borrowed can only be applied in the execution of the *enumerated powers* of Congress, and those *implied* therefrom; that *borrowed* money cannot be applied for the "general welfare"; and, therefore, the *borrowing* clause cannot be relied on in order to furnish money for the general welfare. Furthermore, all money borrowed should first be placed in the treasury and then appropriated by law. (Constitution, Art. 1, § 9, clause 7.)

credit of the United States is not pledged. The United States is not liable on the bonds and has not promised to pay them.

Congress voted down an amendment for the United States to guarantee the bonds, which shows that it did not intend to be considered responsible therefor (56 Cong. Rec. 608, 609, 591; *U. S. v. Del. & Hud. R. R. Co.*, 213 U. S. 366, 414.)

The Government expressly disclaims any liability whatever on the bonds (Farm Loan Primer, Ans. 102).

None of the proceeds of the bonds belong in any way to the United States. The disposition of such proceeds is not made by Congress, but by the Directors of the Federal Land Banks who are not even public officials. Farm loan bonds are neither an asset nor liability of the United States.

2. Money obtained from private investors by the sale to them of bonds issued by the Federal Land Banks and secured by the farm mortgages of private farmers, is not money borrowed on the credit of the United States; and is not an exercise of the Congressional power to borrow money.

3. The Farm Loan Bonds are the obligation, not of the United States, but of the Federal Land Banks which are private corporations. They were issued by the Banks solely upon the faith and credit of the mortgages pledged to secure their payment, and of the joint and several liability of the various Land Banks, who by statute, are expressly made liable for the payment of the bonds.

The accidental, temporary ownership by the United States of stock in the Federal Land Banks cannot make the acts of the banks, the acts of the Government. Even in the case of The First and Second Banks of the United States, in which the Government was a large, permanent stockholder, and which were incorporated solely for the purpose of carrying out the express powers of Congress, it was held that none of the privileges of the Government were imparted to the Bank, but that the Government by becoming a stockholder, laid down its sovereignty so far as respects the transactions of the corporation. (*Bank of the U. S. v. Planters' Bank*, 9 Wheat. 904, 907.)

It is an established principle that the Government's ownership of stock in a bank does not make the act of the corporation that of the Gov-

ernment. (*Briscoe v. Bank of Kentucky*, 11 Peters, 257; *Bank of the U. S. v. Planters' Bank*, 9 Wheat. 904, 907; *Woodruff v. Trapnall*, 10 How. 190, 205; *Carran v. Arkansas*, 15 How. 304, 308-9; *Bank of Kentucky v. Wister*, 2 Peters, 318, 322; *Louisville R. R. Co. v. Letson*, 2 How. 497, 550.)

Notwithstanding the contrary view in Justice STORY's dissent, Justice MILLER's Lectures and Prof. Willoughby's textbook (quoted and relied on in Judge HUGHES' Brief) there has never been any disposition on the part of this Court to qualify the decision in the *Briscoe* case; but on the contrary, the declaration made by Chief Justice MARSHALL nearly 100 years ago in *Bank of the United States v. Planters Bank*, 9 Wheat. 904, 907, that:

"It is we think a sound principle that when a Government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted. * * * As a members of a corporation, a Government never exercises its sovereignty. It acts merely as a corporator,

and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act.

“The Government of the Union held shares in the Old Bank of the United States; but the privileges of the Government were not imparted by that circumstance to the Bank. * * * The Government, by becoming a corporator, lays down its sovereignty, so far as respects the transactions of the corporation, and exercises no power or privilege which is not derived from the charter.”

has been reiterated many times and is to-day the principle controlling the rights of the United States when it becomes a stockholder of a corporation. (*Ches. & Del. Canal Co. v. U. S.*, 250 U. S. 123, 126.)

Consequently, when the United States became a stockholder in the Federal Land Banks their actions were not the actions of the Government, but were essentially the actions of the corporation alone. The ownership by the United States of the whole or any part of the capital stock of a corporation, whether chartered by the United States or by an individual State, does not operate to confer upon the corporation the privileges, prerogatives or immunities of sovereignty, or to make the action of the corporation in any sense the action of the Government.

This doctrine is strikingly illustrated in *Commercial Pacific Cable Co. v. Philippine Nat. Bank*, 263 Fed. 218, where cablegrams between the Bureau of Insular Affairs at Washington and the Governor General of the Philippines contained messages to and from the Philippine Nat. Bank and were carried at the Government rate. The question was whether the Philippine Nat. Bank occupied such a relation to the Government as to be entitled to have its messages sent as departmental messages.

The Philippine Government owned nearly the entire capital stock of the bank, which was created by a special act of the Philippine legislature for the purpose of taking over the Philippine Government Bank. The approval of the Governor General and of the presiding officers of the Philippine legislature is necessary for various corporate acts of the Bank, which is the official governmental depository and is peculiarly subject to the direct control of the Governor General and the Philippine Senate.

Notwithstanding those intimate relations, it was held that the Bank was neither a department nor an agent of the United States .

4. In response to the suggestion that the bonds were executed under the borrowing power

because the Federal Land Banks were chartered by Congress, it is sufficient to say:

(a) The argument is an example of reasoning in a circle because in one breath the validity of the bonds is based on the borrowing power *because* executed by a Federal corporation, and, next, the very *existence* of the Federal corporation is defended as a *means* for executing the borrowing power.

(b) Congress has chartered several railroads, but no one has ever suggested that their bonds were valid under the borrowing power of the Constitution.

SECOND POINT.

Congress could not acquire the power (1) to create a series of corporations (Federal Land Banks and Joint Stock Land Banks) to engage in the business of lending private capital on farm mortgages, and (2) to exempt them from all State control, by the mere expedient of calling such corporations "Banks" and endowing them with the possibility of acting as depositaries of public money or financial agents.

In the case of the Joint Stock Banks, there is not even the flimsy pretense (which nominally exists in the case of the Federal Land Banks) that the power of appropriation is in-

volved or that the money raised by the mortgages is to be used for agricultural development. There is *no limit or restriction whatever* as to the *purposes* for which the money loaned may be used, as Joint Stock Banks are expressly exempted from the limitations imposed upon Federal Land Banks in that respect. (Cf. § 16; §12, Clause Fourth (a), (b), (c), (d).)*

For example, an anarchist owning unimproved, vacant, uncultivated farm lands can mortgage them to a Joint Stock Bank in order to use the money to advance the cause of Bolshevism; and, yet, the mortgage, the income therefrom, the collateral trust bond (Farm Loan Bond) issued against it and secured thereby, and the income therefrom, are *wholly exempt* from all State and Federal taxation.

The Government's argument is this:

Congress has the power to create depositaries of public money and financial agents of the Gov-

*Even the co-operative and collective plan of borrowing by the farmers; the joint and several liability of the banks, and the full degree of Federal supervision, which exist in the case of the Federal Land Banks and were the strongest arguments advanced in Congress in favor of the Act, were specifically *dispensed with* in the case of the Joint Stock Banks, because some farmers might object to a co-operative undertaking with their neighbors, or to the publicity and scrutiny thereby entailed. (Senate Rep. 144, p. 11; House Rep. 630, p. 910; 1st Annual Rep. of Federal Farm Loan Board, p. 22.)

ernment (*McCulloch v. Maryland*, 4 Wheat. 316; *Farmers &c Nat. Bk. v. Dearing*, 91 U. S. 29); and, from that premise the Government deduces the conclusion that because Congress (§ 6) authorized the Secretary of the Treasury to designate the Federal Land Banks and the Joint Stock Banks depositaries and financial agents, it was also entitled (1) to confer upon them the right to conduct the private business of lending on farm mortgages and (2) to exempt them from all State taxation. (*Osborn v. Bank*, 9 Wheat. 738, 864; *First National Bank v. Union Trust Co.*, 244 U. S. 416.) This amounts to the assertion, that Congress acquires the right to create a corporation, *to endow it with the power to do things which Congress has no right to regulate or control, and to exempt it from the power of the States*, by the simple expedient of declaring that the Government may, if it chooses, use a corporation as its agent in some particular (but without ever so using it).

Such a claim of Congressional authority has never before been advanced in this Court and must be promptly rejected.

If the mere *possibility of performance* of incidental Governmental duties authorizes Con-

gress to create corporations (a) to exercise powers not conferred on Congress by the Constitution, and (b) to exempt such corporations' private operations and assets from all taxation, then cannot Congress make all State Banks potential depositaries, declare libraries the custodians of copyrighted books, department stores and drug stores agencies for the sale of War Savings Stamps, insurance companies agencies for the compilation of census statistics, and thus exempt from State taxation, everything connected with their private business profits?

Instead of creating, or using an existing corporation as an instrumentality, Congress might utilize a State official or State institution for some Federal purpose. But that does not authorize Congress to lessen the State authority over such agency. (*U. S. v. Jones*, 109 U. S. 513, 519; *Mulcrevy v. San Francisco*, 231 U. S. 669, 673; *Holmgren v. U. S.*, 217 U. S. 509, 517.)

Indeed, as a means for carrying into effect its express powers, Congress has already authorized purely *intra-state* steam railroads to carry Government troops, supplies, mails, etc.; has declared railroads, canals, etc., to be post roads; and has authorized State Banks and Trust Companies to act as both "depositaries" and "fiscal

agents" of the Government in connection with the sale of Government bonds, certificates of indebtedness and War Savings Certificates. (See Second, Third and Fourth Liberty Bond Acts.)

Because State Banks and Trust Companies have been thus designated as depositaries and fiscal agents of the Government, and have in fact served as such Government instrumentalities, can it be contended that Congress has the power to declare that all mortgages executed to such State institutions are Federal instrumentalities and exempt from State taxation; and that all collateral trust bonds issued *by* such State institutions (as vast numbers of them constantly do issue), are instrumentalities of the Federal Government and likewise exempt from State taxation? Or can Congress declare that all the employees of such institutions, even in the performance of its private business, shall be exempt from the State's Minimum Wage or Hours of Labor laws?

It must be remembered that we are considering a question of *constitutional power*. If, as the Government now contends, Congress *has the power* to create a possible depositary and fiscal agent and can declare its private business

and all obligations executed to or issued by it, exempt from taxation, certainly the principle supporting such action, also authorizes Congress to designate individuals, firms and corporations as depositaries and fiscal agents, and thereby exempt their private business from State taxation. There is no pretense that the private business of the Farm Loan Banks is (as in the *McCulloch* and *Osborn* cases), essential to the performance of governmental duties.

If, then, these Joint Stock Banks and Federal Land Banks are to be sustained on the principle of possibly acting as depositaries or financial agents, it would be within the control of Congress *to exempt from State taxation the shares of stock in State corporations used as Federal depositaries or fiscal agents, and also the property and business of firms and individuals similarly so employed.*

For some years past State banks, trust companies, firms and private bankers have been the *means* by which Congress has collected income taxes at the source, thereby acting as important Federal instrumentalities in the execution of the express power of taxation. The income tax law requires all firms or corporations engaged in the business of collecting foreign payments

of interest or dividends to be licensed by the Government and to withhold the income tax at the source. The fact that these persons were engaged in that foreign business made them peculiarly valuable as collecting instrumentalities of the Government's taxes. Could Congress have declared that mortgages executed by persons to such Banks, Trust Companies, firms or private banking houses, were exempt from taxation and that all bonds issued by such institutions or persons were similarly exempt from taxation in the hands of third parties who purchased them as an investment?

The supporters of the Act claim that because Congress has the implied power to establish national banks which have large sums of money on deposit, deal in money, transfer funds from place to place by operations in exchange, furnish a basis for a sound currency, and *inter alia* deal with ordinary *commercial* credits, *consequently* Congress must also have the right to establish banks to deal with *agricultural* credit, but which possess *none* of the attributes of commercial banks. The authors of those arguments have failed to appreciate the constitutional ground upon which Congress is authorized to establish what they term a bank of commercial credit.

It must always be borne in mind that neither the Federal Land Banks nor the Joint Stock Banks can lend any assistance towards furnishing or regulating a sound currency; nor assist the Government in times of stress by furnishing liquid capital (from depositors' funds) to meet sudden governmental needs,* nor indeed to perform any of the functions which render the National Banks so essential to governmental operations.

On the contrary, by the very nature of their long term loans, in times of financial stress or governmental need, the Farm Loan Banks have to be helped *by* the Government. To-day, the Government has had to advance \$175,000,000 to enable the Banks to operate; and at a time when the Government was having to pay 6 per cent for its own borrowings!

When the grounds upon which the power of Congress to establish the old Bank of the United States and the present National Banking System, are critically examined, it will be seen that the power to create such banks is rested upon circumstances wholly absent in the case of both the Federal Land Banks and the Joint Stock Banks.

*For the simple reason that their assets are required to be tied up in long term mortgages and must be kept closely invested in that way in order to produce the necessary funds to redeem the Farm Loan Bonds at maturity.

Both the First and the Second Banks of the United States and the present National Banks were created immediately after, or during, a great war, for the express purpose of affording the *means* for the *execution* of important *express* powers vested in Congress.

I. *The decisions in McCulloch v. Maryland, Osborn v. Bank of U. S. and 1st Nat. Bank v. Union Trust Co., do not afford any basis for the creation of either the Federal Land Banks or the Joint Stock Banks.*

1. The Farm Loan Banks are expressly *prohibited* from doing everything which was held to be the constitutional basis for the incorporation of the First and Second Banks of the United States and of the National Banking System; while, on the other hand, the only thing they are *permitted* to do (*i. e.*, lend on real estate mortgages) was expressly *prohibited* to both the Banks of the United States, and, until 1913, to all National Banks.

Therefore, the creation of the Farm Loan Banks (with but one function to perform and denied all others) cannot be based upon the arguments and considerations which justified the creation of the old Bank of the United States

and the National Banks who were *prohibited* that *one* function and *given all the others*.

2. The authorities cited in the margin* show that the First and Second Banks of the United States were in fact *the means actually used* by the Government to carry on its fiscal operations; to obtain loans in anticipation of revenues; to facilitate the payment of Federal taxes; to furnish a uniform and orderly currency on a sound specie basis; to collect, safeguard and transport money, and to transfer public funds from place to place (without cost to the Government or loss to it on account of the difference in exchange) as the exigencies of the Nation required. None of those functions can be performed by the Farm Loan Banks.

The appropriateness, if not the absolute necessity for the Second Bank of the United States

*BANK OF THE UNITED STATES. *McCulloch v. Maryland*, 4 Wheat. 316, 407-409; *Osborn v. Bank*, 9 Wheat. 738, 861-864; Beveridge's *Life of John Marshall*, Vol. 4, pp. 171, 176-195; Holdsworth & Dewey's "First and Second Banks of the United States"; McMaster's *History of the People of the United States*, Vol. 2, p. 29; *Id.* Vol. 4, p. 280 *et seq.*; especially pages 300-318; Hamilton's Report on a National Bank.

NATIONAL BANKING SYSTEM. Lincoln's Veto Message of June 23, 1862 (6 Messages and Papers of the Presidents, pp. 87, 88); Lincoln's 2nd Annual Message, Dec. 1, 1862 (*Id.*, pp. 126, 129-130); Rhodes' *History of the United States*, Vol. 4, pp. 237-239; Noyes' "History of the National Banking Currency," p. 41; Davis' "The Origin of the National Banking System," pp. 79, 80, 89, 106, 109; *Veazie Bank v. Fenno*, 8 Wall. 533, 536-539, 548.

as a national agency, arose from the fact that there was an utter chaos in banking; the Government had been deprived of its almost indispensable fiscal agent (the First Bank of the United States); the Government could not negotiate loans; taxes were collected with great difficulty, loss, and delay; the Treasury was so near bankrupt that the Department of State did not have sufficient money to pay its stationery bill; in desperation, the Treasury exchanged 6 per cent Government bonds for the notes of State Banks, thereby losing \$5,000,000 from worthless bank bills. The local State Banks became the sole depositaries for Government funds, the worthless currency of such banks flooded the country, interfering with commerce and all business, while the suspension of specie payments by the State Banks rendered a uniform national currency indispensable.

The National Banking System was established, and was in fact used by the Government, in order to furnish a sound and uniform currency and to prevent injurious fluctuations thereof; to facilitate the payment of troops, to receive subscriptions for, to distribute among the public, and to provide a market for, Government bonds which were used as the basis of the notes issued

by the banks; to furnish depositaries at convenient places throughout the country for public funds, at a time when every collector of Federal taxes was afraid to deposit the money in State Banks, was responsible for the funds collected and yet was compelled to hold it in his personal possession, subject to the danger of fire and accident, as the Government did not even furnish an office safe for that purpose.*

The Farm Loan Banks do not assist the Government to borrow money. To say they do, or can, is simply to ignore the plainest facts. *Every dollar of their deposits* (in the unlikely event of their stockholders making any deposits) must be invested in Farm Loan Bonds or farm mortgages. (§ 11.) They are not even permitted to invest their deposits in United States bonds.

Theoretically, the Farm Loan Banks have the power to invest the moneys received from the interest and amortization payments by the farmers, in U. S. bonds; but practically they would never do so, for such act would be at a loss and would operate to stop the system from functioning.

*For authorities, see footnote at p. 63, *supra*.

By what authority can Congress create a bank?

In *McCulloch v. Maryland*, 4 Wheat., 316, the implied power of Congress to incorporate a bank was based upon the ground that in order to carry out the *express* powers to collect taxes, to borrow money, to regulate commerce, to carry on war and to raise and support armies and navies, it was absolutely necessary for the Government to conduct fiscal operations; that a bank was a convenient, useful and essential instrument in the prosecution of fiscal operations and therefore Congress was authorized to create the bank and use it for those purposes.

In *Osborn v. Bank*, 9 Wheat., 738, the Court re-examined the basis of the *McCulloch* decision and reaffirmed it, holding (as the marginal authorities on p. 63, *supra*, demonstrate) that the Bank of the United States was not created for private purposes, but was created for National purposes only; that the operations of the Bank gave value to the currency in which all governmental transactions were conducted and acted as a machine for the money transactions of the Government; that "as a machine for the fiscal operations of the Government" it was *essential* for the Bank to engage in *general bank-*

ing business, as otherwise, the Bank could not perform these services for the Government which were exacted from it, and for which it was created.

Considering that the Bank of the United States was chartered by Congress for the *express purpose* of performing, and that it *did* perform, the indispensable governmental services necessary to carry into effect important, express and exclusive powers of Congress, how can it be contended that *those* decisions afford *any warrant* for Congress to create the Farm Loan Banks?

The basis of the *McCulloch* and *Osborn* cases was not that the banks were mere passive depositaries or undefined financial agents, but was this: *By virtue of engaging in general banking*, they were enabled to perform a great many active and indispensable services *essential* to be performed in order to carry on Government business.

In the case at bar, the Farm Loan Banks are expressly *prohibited* from doing those things which authorized the creation of the Bank of the United States. Their private business cannot in any conceivable manner serve as a means for carrying any Congressional powers into execu-

tion; nor do they in fact perform any duties as depositaries or financial agents.*

If it should be suggested that the mere potential power to act as depositary and fiscal agent, *ipso facto* authorizes these institutions to carry on a purely private business, exempted from State control and taxation, then *a fortiori* there would be exempted from State control and taxation the numberless State Banks and Trust Companies which, by the Second, Third and Fourth Liberty Bond Acts were not only *designated*, but in fact *acted* as "depositaries" and "fiscal agents" of the United States "in connection with the operations of selling and delivering any bonds, certificates of indebtedness or War Savings Certificates of the United States."

Certainly institutions which *in fact* act as depositaries and fiscal agents of the United States pursuant to express statutory authority, would be more clearly exempted from State taxation than a Farm Loan Bank which has a mere possibility in that direction, but which has never been vitalized by designation from the Secretary of the Treasury.

*The so-called "seed loan" services of three Federal Land Banks were not banking services at all. They could have been performed by any private individual.

Since the passage of the Farm Loan Act, the United States has gone through the greatest war in history; its fiscal operations have exceeded many fold its previous combined operations since the beginning of the Government; it has called into service, as a means for carrying out its fiscal powers, innumerable agencies, individual and corporate, none of which were ever deemed to be thereby exempted from State taxation or control; and yet it is now solemnly argued that the Farm Loan Banks, engaged in a wholly private business, are exempted, although they have never as yet been designated to act as depositaries.

3. On the other hand, the *McCulloch*, *Osborn* and *Union Trust Co.* cases are controlling authorities against the validity of the Farm Loan Banks.

In *McCulloch v. Maryland*, after holding that Congress could charter that particular bank because it was an appropriate means, plainly adapted to a legitimate end within the scope of the express powers granted by the Constitution, the CHIEF JUSTICE emphasized the fact that in order to justify the incorporation of a Bank it must be an *appropriate* measure to carry out *express* powers.

The Court said (p. 423) :

“Should Congress, *under the pretext of executing its powers*, pass laws for the accomplishment of objects *not* entrusted to the Government, it would become the painful duty of this tribunal should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is *really calculated* to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground.”

Congress here undertook the accomplishment of an object not entrusted to it, namely, to provide a farm loan mortgage system throughout the States; and attempted to save its constitutionality by the pretext of declaring that the Secretary of the Treasury might designate the corporation a depository and financial agent. If the present state of case does not fall directly within the above language of CHIEF JUSTICE MARSHALL, what case could fall within it?

Again, in *Osborn v. Bank*, the great Chief Justice, while sustaining the validity of the bank's creation, notwithstanding the fact that it engaged in private business while carrying out its governmental functions, emphasised the fact that the bank was created *primarily for national pur-*

poses and that it was only necessary to allow it to do private business *in order to effectively carry out the national purposes for which it was particularly created*. In other words, in order to be an effective *means* for performing the fiscal operations of the Government, it was desirable that the Bank should be engaged in the private banking business as well; because, for example, if the Bank collected public revenues and locked them up as in a subtreasury, the country would be unduly drained of currency with many resultant governmental disadvantages. (See, also, Lincoln's speech in reply to Douglas, December, 1839: Vol. 1, pp. 197-198 of Lincoln's Writings, Constitutional Edition.)

Continuing, the CHIEF JUSTICE said that if the Bank had been created "having private trade and private profit for its great end and principal object" it would have been taxable by the State—but that the Bank of the United States was *not* chartered principally for private profit, saying (p. 859):

"This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the *casual circumstance* of its being employed by the Government in the transaction of its fiscal af-

fairs would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner."

Does not that language precisely describe the Farm Loan Banks, except that they are not even *casually* employed by the Government as depositaries, never having been designated by the Treasury Department for that service, and may never be?

Emphasizing that Congress could not create a corporation to carry on a private business, the Court declared that the Bank of the United States (as the history of the times demonstrates, p. 63, *supra*) was not chartered in order that private individuals might carry on the banking business, but that it was created especially as a means for *executing the powers vested in Congress*, saying (p. 860):

"The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the Government, is admitted; but the Bank is not such an individual or company. It was not created for its own sake, or for private purposes. *It has never*

been supposed that Congress could create such a corporation. The whole opinion of the court in the case of *M'Culloch v. The State of Maryland* is founded on, and sustained by the idea that the Bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the Government of the United States.' It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was *created*, in the form in which it now appears, for *national purposes only.*"

Will anyone have the hardihood to contend that the Farm Loan Banks were only created in order to enable Congress to carry out national purposes vested in it?

Referring to the Bank's power to transact private, as well as public, business, the Court said (p. 861):

"Why is it that Congress can incorporate or create a Bank? This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government. *Can this instrument, on any rational calculation, effect its object unless it be endowed with that faculty of lending and dealing in money which is conferred by its charter?* If it can, if it be as competent to the purposes of government without as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then

this faculty is necessary to the legitimate operations of government, and was constitutionally and rightfully engrafted on the institution."

Would not Farm Loan Banks be as competent to act as depositaries and financial agents of the Government, *without* the added faculties of lending on farm mortgages, as *with* it?

The Court next decided that, as a matter of fact, it was necessary for the Bank, in performing its functions "as a machine for the money transactions of the Government" to "be endowed with that faculty of lending and dealing in money which is conferred by its charter" and in short, that the private trade of lending and dealing in money, was *necessary* to enable the Bank to perform the very services for which it was created.

The Farm Loan Act expressly prohibited the Joint Stock Banks from receiving deposits or transacting any banking or other business except that of lending on farm mortgages; and prohibited the Federal Land Banks from receiving any deposits except from its stockholders who are also borrowers.

For what express national purposes were these Farm Loan Banks created? In what way is such national purpose dependent for its proper execution, upon the lending of A's money to B at low

rates, and exempting its transactions from State taxation? What fiscal operations of the Government are aided by the private business of farm mortgages? In what way is that branch of the business necessary to enable the Farm Loan Banks to perform any national purpose?

The fallacy in the argument for the Joint Stock Banks is that it erroneously assumes that Congress had the power to create, and did create national banks, in order to provide credit facilities to industry and commerce and from which assumption the conclusion is deduced that what Congress could do for men in commercial business it can likewise do for men in the farming business. It needs no extended argument to demonstrate that Congress has no power to create banks to aid business credits. Its sole power is to create a bank which because it does such business can thereby more efficiently serve as a means of executing those great express powers of Congress, to collect taxes, provide money, etc., *whereas* a bank for farm loans cannot aid Congress in its powers at all; and hence cannot be created.

Remembering that the Farm Loan Banks are prohibited from doing any banking business and are confined to the business of farm mortgage

lending, let us examine the *Osborn* and *Union Trust Co.* cases to see what bearing they have on the subject.

(a) In the *Osborn* case, it was held that the business of general banking conducted for private profit, was, of and in itself, *essential* to be carried on, in order to furnish the necessary facilities that the corporation might in turn act "as a machine for the money transactions of the Government"; and for that reason alone, it was held that Congress had the right to endow the Bank with ordinary banking functions as a necessary means for executing conceded powers of Congress. But certainly it cannot be contended that the farm mortgage business bears any relation whatever to the execution by the Farm Loan Banks of any express power of Congress, especially as they have never been designated to act.

(b) Since the creation of the National Banking System, almost every State in the Union has passed laws to permit a corporation to exercise both commercial banking powers and *fiduciary* powers.

In 1913, the Federal Reserve Act, authorized National Banks also to exercise fiduciary powers.

In *First National Bank v. Union Trust Co.*, 244 U. S., 416, it was held that Congress had the constitutional power to endow national banks with the capacity to transact private fiduciary business. The decision was based upon the ground that while ordinarily it might be beyond the power of Congress to enter the fiduciary field, yet, as State banks had very generally taken on such powers and had thereby obtained an advantage over National Banks, it was competent for Congress to give them these additional powers in order to make the operation of the National Banks successful.

The Court said the ruling in *Osborn v. Bank* was (p. 420) :

"that although a particular character of business might not be when isolatedly considered within the implied power of Congress,"

yet

"if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful."

That is exactly our explanation of the *Osborn* case (pp. 66, 70-74, 76, *supra*), namely, that in order to enable the Bank successfully to perform its functions as a machine for the fiscal opera-

tions of the Government, Congress could authorize it to conduct such private banking business as tended to make it a more effective Government agent.

The Court criticised the lower court because it had considered the power of Congress to enter the fiduciary field as an independent question and had not considered it as a necessary incident to the performance of the Bank's governmental functions, saying (p. 424) that the lower court

"instead of testing the existence of the implied power to grant the particular functions in question by considering the bank as created by Congress as an entity with all the functions and attributes conferred upon it, rested the determination as to such power upon a separation of the particular functions from the other attributes and functions of the bank and ascertained the existence of the implied authority to confer them by considering them as segregated, that is, by disregarding their relation to the bank as component parts of its operations—a doctrine, which, as we have seen, was in the most express terms held to be unsound in both of the cases [*McCulloch v. Maryland* and *Osborn v. Bank*]."

Again the Court said:

"What those cases [*McCulloch* and *Osborn*] established was that although a business was of a private nature and subject to State regulation, if it was of such a character as to ~~cases~~ it to be incidental to the successful discharge, by

a bank chartered by Congress, of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as a part of its public authority. * * * From this it must also follow that even although a business be of such a character that it is not inherently considered susceptible of being included by Congress in the powers conferred on national banks, that rule would cease to apply if by state law state banking corporations, trust companies, or others which by reason of their business are rivals or *quasi*-rivals of national banks, are permitted to carry on such business."

Farm Loan Banks are not only *not* national banks, but they are *prohibited* from doing everything that national banks are authorized to do.

There is no magic about the name "Bank." Can Congress authorize the great life insurance companies and department stores to act as depositaries and purchasing agents and thereby exempt them from all State control—for if the *taxing* power can be prohibited, all others can also be denied to the States.

Can it be successfully contended that because Congress uses National Banks as a means for the execution of conceded constitutional powers and may confer upon them private powers

deemed necessary for the successful performance of their public duties, it is also competent for Congress primarily to confer such private powers upon a corporation which performs *no* public functions? Or, putting it in a slightly different way, can Congress assume the power to authorize corporations to enter upon fields of activity reserved to the States, by the simple declaration that such corporation *may*, at some future time, be used, not as National Banks are used, but as an incidental and unimportant governmental agency wholly unrelated to the private business sought to be authorized? If Congress has that power, then this government ceases to be one of enumerated powers and Congress can enter upon any prohibited field of endeavor.

(c) As most State Banks are authorized to lend upon real estate mortgages, it was, of course, a mere matter of expediency whether Congress should authorize National Banks to enter that field; but that is because the National Banks are actually employed as the *means* of executing the express powers of Congress; and the addition of certain private powers falls clearly within the doctrine of the

Osborn and *Union Trust Co.* cases. But it is a very different thing for Congress to enter primarily upon a *prohibited* field and to endeavor to justify it by declaring that the corporation through which Congress operates shall have a possible power to act as a Government agent.

If the doctrine contended for by the Government be sound, is there any limit to the fields of private endeavor in which Congress may enter?

THIRD POINT.

The farm mortgages executed to the Federal Land Banks and to the Joint Stock Land Banks, and the Farm Loan Bonds issued by them respectively, and held by the general investing public, are subject to State taxation.

The power to tax exists concurrently in both the State and Federal Governments; and is equally indispensable to the existence of each (*McCulloch v. Maryland*, 4 Wheat. 316, 425; *Lane Co. v. Oregon*, 7 Wall. 71, 76, 77).

The Constitution does not expressly prohibit the States from taxing the instrumentalities of the Federal Government, and contains no restriction whatever on the power of either to tax, except a few express prohibitions not here ma-

terial** ; nor does it grant any power to Congress to exempt property from State taxation or otherwise to control State action as to taxes.

Nevertheless, the Farm Loan Act attempts to *deprive* the States of the power to tax a species of property which has always been taxed and is one of the principal sources of revenue to many States, counties and cities.

Where does Congress obtain such a power? Certainly there is no *express* grant. Is there an implied power to exempt property from State taxation? If so, to what express power is it incidental?

The answer to these questions is that there are certain *implied* limitations on the taxing power of both the State and Federal Governments arising out of the very nature of our dual system of Government (*McCulloch v. Maryland*, 4 Wheat. 316, 425, 426; *The Collector v. Day*, 11 Wall. 113, 123; *U. S. v. Railroad Co.*, 17 Wall. 322, 327; *Railroad Co. v. Peniston*, 18

**Savings Society v. Multnomah Co.*, 169 U. S. 421, 426, 427, and cases there cited; *Kirtland v. Hotchkiss*, 100 U. S. 491, 498; *New Orleans v. Stempel*, 175 U. S. 309, 322; *Bristol v. Washington Co.*, 177 U. S. 133; *De Ganay v. Lederer*, 250 U. S. 376, 381, 382, and cases there cited.

***On Congress*: No tax on exports; direct taxes must be apportioned; indirect taxes must be uniform; *On the States*: No tax on exports; no tax on imports, except for inspection purposes; no duty on tonnage.

Wall. 5, 30; *Dobbins v. Commissioners*, 16 Pet. 435, 447; *Van Brocklin v. Tennessee*, 117 U. S. 151, 157 *et seq.*); that any restriction upon the State's power to tax arises from the operation of the Constitution itself; and that Congress cannot, by any declaration of exemption, create one that would not have equally existed without such declaration. In other words, any attempt by Congress to exempt property from State taxation, if valid, is merely declaratory of what the exemption would have been anyway, without such declaration.

This leads us to consider the nature of the implied limitations on the taxing power, which have been consistently applied by this Court for just 100 years.

The doctrine was first announced by Chief Justice MARSHALL in *McCulloch v. Maryland*; and all subsequent cases have been applications of that principle, which has never been departed from, and of which the statutes are but declaratory.

Shortly after the Second Bank of the United States was incorporated (for the express purpose of furnishing a means by which the fiscal operations of the Government might be con-

ducted), numerous States endeavored to exterminate the Bank by the weapon of State taxation. At least eight States (Indiana, Maryland, Tennessee, Georgia, Illinois, North Carolina, Kentucky and Ohio) passed laws which either directly prohibited the Bank from doing business within their limits, or imposed ruinous taxes upon it, or its branches, for the privilege of transacting business within the State, the taxes running as high as \$50,000 or \$60,000 a year upon each branch in Tennessee, Kentucky and Ohio (Beveridge's *Marshall*, Vol. IV, p. 207).

A Maryland Statute prohibited any Bank (other than Maryland State Banks) from issuing any notes except of certain specified denominations, which must be upon stamped paper, the amount of the stamps varying from \$0.10 to \$20, obtainable only from the State, in lieu of which a tax of \$15,000 a year was imposed.

The validity of this statute as applied to the Bank of the United States, arose in *McCulloch v. Maryland*. The Court held that a State could not tax the *means* employed by Congress to execute its powers; and this conclusion was based upon the ground that, as, the power to tax involved the power to destroy, the States might

so heavily tax the means or instruments employed by the Government in the execution of its national powers as to prevent the Government from functioning. Chief Justice MARSHALL stated his conclusions in the following language, which defines the implied limitation upon the taxing power of the States (4 Wheat. 436):

“The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared.

We are unanimously of opinion that the law passed by the Legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a *tax paid by the real property* of the bank, in common with the other real property within the state, nor to a *tax imposed on the interest which the citizens of Maryland may hold in this institution*, in common with other property of the same description throughout the State.

But this is a tax on the *operations* of the bank, and is, consequently, a tax on the opera-

tion of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

In *Osborn v. Bank* (involving the validity of an Ohio law passed "for the avowed purpose of expelling the Bank from the State" and imposing an annual tax of \$100,000 as a privilege for doing business), it was held that the private, as well as the public, operations of the Bank were *essential* to the performance of its services to the Government, and that a State could not tax it for the privilege of doing business.

In response to the contention of counsel (9 Wheat. 777, 794, 795) that in order for the Bank to be exempt from State taxation, Congress must insert a specific clause of exemption in the charter, the Court pointed out in the following language that the exemption from State taxation did not rest upon the exercise by Congress of any power to declare an exemption, but was incidental to the creation of the instrumentality itself and that the judicial power was the instrument to see that the necessary security of governmental instrumentalities from State interference was obtained:

"It is contended that, admitting Congress to possess the power, this *exemption* ought to have

been *expressly asserted* in the act of incorporation; and, not being expressed, ought not to be implied by the court.

It is not unusual for a legislative act to involve consequences which are not expressed. An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of Congress to imply, without expressing, this very exemption from State control which is said to be so objectionable in this instance. The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while in the line of duty; and yet this protection is not expressed in any act of Congress. It is incidental to, and is implied in, the several acts by which these institutions are created, and is secured to the individuals employed in them by the judicial power alone; that is, the judicial power is the instrument employed by the government in administering this security.

That department has no will, in any case. If the sound construction of the act be that it exempts the trade of the Bank, as being essential to the character of a machine necessary to the fiscal operations of the government, from the control of the States, Courts are as much bound to give it that construction as if the exemption had been established in express terms."

This language has but one meaning and that is that when it comes to the exemption from State taxation of instrumentalities of the Federal Government in order that they may be preserved from destruction, it is at last the judicial power which must determine whether or not the exemption exists by virtue of the nature of the instrumentality.

The authorities show

First. That many instrumentalities of the Federal Government have been subjected to the power of State taxation, because, in the opinion of this Court, such taxation did not interfere with their operations for the Government.

Second. That such exemption exists not by virtue of any *declaration* by Congress that the exemption should exist, but under the Constitution *ex proprio vigore*.

Third. That in the case of the National Banks, Congress has expressly provided (R. S. 5219) for the taxation of the shares of stock and the bank's real estate exactly as MARSHALL held in *McCulloch v. Maryland* they could be taxed.

A short review of the cases will show they are all consistent with these principles.

I. *Means and instrumentalities of the State and Federal Governments respectively exempted from taxation by the other.*

(a) The States cannot tax United States Government bonds or other direct obligations of the United States (*Weston v. City of Charleston*, 2 Pet. 449; *Bank v. Supervisors*, 7 Wall. 26); nor bonds issued by municipalities in the Territories established by Congress for the Government of the people before their admission as States (*Farmers' Bank v. Minn.*, 232 U. S. 516) or by the District of Columbia (*Grether v. Wright*, 75 F. R. 742, 753, *et seq.*); nor land owned by the United States, either when purchased in pursuance of a governmental function, or acquired as a part of its territorial domain by a treaty or otherwise (*Van Brocklin v. Tenn.*, 117 U. S. 151); nor the receipts from coal mines owned by the Indians but operated by private parties under a lease from the Government in pursuance of the Government's treaty obligations to apply the revenues from the mines to the education of Indian children (*Choctaw & Gulf v. Harrison*, 235 U. S. 292); nor the salary of a Federal official (*Dobbins v. Commissioners*, 16 Pet. 435); nor the necessary operation of a means adopted by the United

States to execute its express powers (*McCulloch v. Maryland*, 4 Wheat. 316; *Williams v. Talladega*, 226 U. S. 404, 418, 419); nor the franchise of a corporation created by Congress. (*California v. Pacific R. R. Co.*, 127 U. S. 1); nor the tangible or intangible property (except real estate) of corporations organized primarily as instrumentalities of the Government. (*Owensboro National Bank v. Owensboro*, 173 U. S. 664.)

(b) Reciprocally, Congress cannot tax the bonds or obligations of a State or its municipal subdivisions (*Pollock v. Farmers Loan & Trust Co.*, 157 U. S. 429, 584; *Mercantile Bank v. New York*, 121 U. S. 138, 162); or the salary of a State official (*Collector v. Day*, 11 Wall. 113, 124), or municipal revenues (*U. S. v. Railroad Co.*, 17 Wall. 322).

The principle underlying all of the foregoing cases, is that neither the State nor Federal Government can tax the property or operations of any instrumentality used by the other as a means of executing its powers, subject to the qualification (a) that such agent's real estate can be taxed (in common with other realty) and (b) that its other property can also be taxed in those cases where the agency is engaged in pri-

vate business, which private business is not essential to the performance of its governmental duties.

II. *The States may tax the property and operations of persons and corporations engaged in private business, although also employed by the Federal Government in the transaction of its business.*

Accordingly, it has been held that a State can tax checks drawn by the United States in the payment of its interest obligations, notwithstanding an attempted Congressional exemption of United States obligations from State taxation. (*Hibernia Savings Society v. San Francisco*, 200 U. S. 310); the personalty, credits, money, etc., of a railroad company chartered by Congress, financially assisted by it, and engaged in performing Federal services (*Thomson v. Railroad*, 9 Wall. 579; *Railroad Co. v. Peniston*, 18 Wall. 5, 30-35; *Union Pacific v. Lincoln County*, 1 Dill. 314); while it is a matter of common knowledge that the States can tax and do tax many species of property which are being used by agents of the United States as the means of executing powers of the Government, such as telegraph lines, dredges, manufacturing plants

(*Gromer v. Standard Dredging Co.*, 224 U. S. 362; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382).

The reason why the States can tax the property and business of railroads, telegraph lines, etc., although they may have been chartered by Congress and used in part as governmental instrumentalities, and yet cannot similarly tax National Banks, lies in the following distinction between the two instrumentalities.

The railroads and telegraph lines could, in fact, perform all the services for the Federal Government just as well *without* the addition of private business, as they can with it (except as a money making proposition); and hence in accordance with the express language of *Osborn v. Bank** the property and private operations of the companies are generally taxable by the State.

On the other hand, the banks, as pointed out in *McCulloch v. Maryland* and in the *Osborn*

*The Court said (9 Wheat. 861) that there would be much difficulty in sustaining the private features of the Bank's charter "if it be as competent to the purposes of Government without as with this faculty" of transacting private business. But the Court held that the transaction of private business was necessary to the legitimate operations of the Government—not because it was more profitable to the Bank, but because the essential functions of the Government work could not be carried out so well, except in conjunction with private banking.

case, could *only* satisfactorily perform their Governmental duties by being endowed with the right to transact private business; as *private* banking business was the *very thing* which was needed to enable them to be an efficient machine for carrying out the money operations of the Government.

A Farm Loan Bank acting as a depository, could, like the railroads, perform such a function just as satisfactorily to the Government without, as with, the addition of the private farm mortgage business. That is an additional reason why they fall as depositories into the category of the railroads and not of that of the National Banks.

The mere possibility that at some future time the United States may elect to designate a Farm Loan Bank as a depository and thereafter may further elect actually to use it as such, while in the meantime the corporation is engaged solely in private business for private gain, certainly does not constitute the corporation such an instrumentality of the Federal Government as to exempt it from State taxation.

In *Baltimore Ship Building Co. v. Baltimore*, 193 U. S. 375, 382, an old Government fort (of course not taxable) was conveyed to a ship-

building company upon condition that it would construct a dry dock thereon, that the United States should have the right to use it forever free of charge, and that if its use as a dry dock was ever abandoned, the property should revert to the United States. It was held that the property was subject to State taxation, the Court saying:

“It would be a very harsh doctrine that would deny the right of the States to tax lands because of a *mere possibility* that they might lapse to the United States. * * * Finally, we are of opinion that the land is not exempt as an agency of the United States. * * * The United States has no present right to the land but merely a personal claim against the corporation, reinforced by a condition. But, furthermore, it seems to us extravagant to say that an independent private corporation for gain, created by a State, is exempt from State taxation either in its corporate person, or its property, because it is employed by the United States, even if the work for which it is employed is important and takes much of its time. *Thomson v. Pacific Railroad*, 9 Wall. 579; *Railroad Company v. Peniston*, 18 Wall. 5.”

The fact that the company is chartered by Congress is not material (*R. R. Co. v. Peniston*, 18 Wall. 5, at p. 34).

It is suggested (rather feebly it is true) that because the Farm Loan Banks were given the

power to buy and sell United States bonds (a power that practically every individually and corporation, State or Federal, possesses), they thereby became instrumentalities of the Federal Government and exempt from State taxation. If that argument were sound, would not every corporation and person who had the power to invest in or who invested in Government securities, be exempted with respect to the *balance of their business* from State taxation?

This argument was considered and answered in *Monroe Savings Bank v. City of Rochester*, 37 N. Y., 365, 370, in the following language, quoted with approval in *Plummer v. Coler*, 178 U. S., 115, 123:

“It is, however, argued with great ingenuity and skill that, inasmuch as the plaintiffs, among other powers given them, have the right to invest their moneys in United States bonds, their franchises and privileges cannot be taxed by the State. The power thus to invest their money, it is contended, is a franchise for lending to the United States, and therefore cannot be taxed, because such taxation would trench on the power of the United States to borrow. This is stretching the argument too far. * * *

The position, that a franchise granted by the bounty of the State is not taxable, because coupled with that franchise is the privilege of loaning money to the general Government, is not

more untenable than to argue that, because such a franchise enhances the credit of the United States, therefore the Legislature could not repeal the law granting the franchise without violating its constitutional obligation."

The farm mortgages executed *to* the Federal Loan Banks and to the Joint Stock Banks as well as the Farm Loan Banks issued *by* them thereon, and held by private investors, are exclusively instruments of private business.

Can it be contended that they partake in the slightest measure of the characteristics of those properties which have been held to be instrumentalities of the Federal Government and hence exempt from State taxation?

The Farm Loan bonds are neither assets nor liabilities of the United States. It does not promise to pay or guarantee the payment of them. No suit could be brought in the Court of Claims upon them. The money raised on the bonds does not go to the Government.

Congress cannot by its mere declaration, exempt property from State taxation. The exemption, when it exists, arises from the operation of the Constitution upon our dual system of Government.

Congress is now considering the creation of a

similar system of Federal *building loan banks* for the purpose of furnishing money at low rates of interest and on long term mortgages, to enable people to buy and build homes;

The "indispensable essential of the system" being that "these bonds are to be tax exempt" "because the bonds can not be sold if they are to be subject to taxation," and "that will be doing no more than we did with the Federal Farm Loan Act with regard to mortgages taken by the Federal Land Banks," where "we called them instrumentalities of the Government." (See "Hearings before the Committee on Banking and Currency of the House of Representatives on H. R. 7597," pp. 7, 8.)

The advocates of the Bill avowed with perfect frankness (p. 11):

"The United States Government is not expected to put 50 cents into this system; they are not called upon to finance it in any way, shape or manner, excepting to the extent of providing a supervision that will see that the system functions properly. *And to provide for tax exemption of their securities*, and, as I said before, * * * to be perfectly frank about it, *we feel that the tax exemption is an essential element of the system*, and in that connection we are justified in making this comparison, that if the Congress of the United States for any reason has seen fit to exempt the bonds of the Farm Loan System *for the purpose of giving easier and larger capital to the farmers of the United States*, we believe we are justified in calling at-

tention to the fact that the *wage workers* of the cities, towns and villages of the United States
 * * *” (interrupted).

If the farmers and the home builders are entitled to get money at low rates of interest by exempting the loans and mortgages from State taxation, certainly the importance of manufactures, as shown in Alexander Hamilton's "Report on Manufactures" would fully justify Congress in providing a system of Federal Manufacturing Banks by which all mortgages and bonds on manufacturing establishments would be exempted from State taxation. This could readily be followed by a similar system with respect to irrigation projects, coal mines, logging, etc.; and if the Federal Government can exempt the bonds and mortgages from State taxation, can it not as readily exempt the land itself, for after all, in many States, a mortgage is an *interest* in land. If the Government's argument is sound that the mortgages and bonds are Federal instrumentalities, and thus exempt from State taxation, there is nothing to prevent Congress from destroying the State Governments by successive measures to withdraw from the States all species of property from taxation. That this is a legitimate test of constitutional power is illustrated in

South Carolina v. United States, 199 U. S. 437, 454, 455.

The power of the States over liquor and the liquor traffic is absolute.* When, in order to lessen the evils of intoxication, South Carolina took over the liquor traffic and prohibited all sales except those made by itself through a system of dispensaries, this Court held that the whiskey was still subject to a Federal tax, because when a State, even in the exercise of its police power, engages in ordinary private business, the business is not exempted from the Federal taxing power because it is conducted by a State; and that the exemption of State instrumentalities from Federal taxation is limited to those of a strictly governmental character, and does not extend to those used by the State in carrying on an ordinary private business.

It is not necessary to extend this brief by lengthy quotations from Mr. JUSTICE BREWER'S opinion, with which the court is perfectly familiar. It is sufficient to observe that he pointed out the large and growing movement in the country in favor of State management of public utilities, including gas, water, and railroads; that

**Bartmeyer v. Iowa*, 18 Wall., 129; *Beer Co. v. Mass.*, 97 U. S. 623; *Kidd v. Pearson*, 128 U. S. 1; *Crane v. Campbell*, 245 U. S. 304; *Barber v. Georgia*, 249 U. S. 254.

the States might take over tobacco, oleomargarine or all businesses, and that if, by doing so, it could exempt the subjects taken over, from Federal taxation, the National government would be crippled.

The same argument applies here. If Congress can withdraw from State taxation the whole field of farm mortgages, it can do the same as to real estate, manufacturing plants, public utilities, mines, private residences, etc.

As pointed out by CHIEF JUSTICE MARSHALL in the *McCulloch* case, reaffirmed in the *South Carolina* case, this is not a case for confidence by one government that the other will not exercise its power of exemption to its fullest extent. The States are entitled here, and now, to insist that Congress shall not drive an entering wedge by exempting farm mortgages, and the private investments based thereon, from State taxation.

In *Flint v. Stone Tracy Co.*, 220 U. S., 171, 173, where it was held that the States could not withdraw from the Federal taxing power, corporations of a public nature, it was said:

"It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished

through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred. The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character."

Certainly, it is no part of the essential governmental functions of the Federal government to provide farmers with money at interest rates lower than they can obtain in the open market. No matter what indirect benefit the public may derive from farmer prosperity, the companies conferring such prosperity are nevertheless private corporations whose business cannot be exempted from State taxation.

The Farm Loan Banks are engaged exclusively in the ordinary private business of lending on farm mortgages and of selling to the investing public "collateral trust" bonds thereon, just as any private individual or State corporation might do. This business has no sort of public nature or connection with the Federal Gov-

ernment, but is of a wholly private character. It does not in the remotest degree tend to carry into execution any express power of Congress; and hence no implied power exists in Congress to authorize the carrying on of this purely private business.

If this proposition should be disputed, then we ask *what* is the legitimate end within the scope of the Constitution to the accomplishment of which this purely private business is an appropriate means?

A moment's reflection will show that it is impossible to indicate any of the objects entrusted to Congress by the Constitution which are in the remotest degree accomplished by the business of private individuals lending money to land owners on farm mortgages, and selling them to the public, which, after all, is the Farm Loan Banks' only business.

CONCLUSION.

In its last analysis, the questions to be determined are (1) whether the Constitution has endowed Congress with the power to provide for schemes of agricultural, social or industrial improvement calling for the use of large quantities of private capital; and (2) whether Congress, in

its desire to see such schemes successfully realized, can infringe upon the taxing power of the States by exempting therefrom the private capital so provided, thereby furnishing the desired scheme with money at a lower rate of interest, and on more favorable terms, than could otherwise have been secured.

If the principles announced in *Kansas v. Colorado* and *South Carolina v. United States* are still the law, it is inconceivable that Congress has the power to provide this system of farm mortgage banks, not for the purpose, as in the case of the National Banks or the old Bank of the United States, of carrying out some of the express powers of Congress, nor to enable Federal agencies adequately to perform their functions in view of the new forms of competition (*First National Bank v. Union Trust Co.*), but solely for the avowed purpose of enabling farmers to borrow money at low rates, because Congress thinks that people with capital *ought* to be willing to lend it on *farm security*, as cheaply as they lend it on (what the owners of the capital consider) a *safer* form of security.

Undoubtedly farmers have not been able to borrow money at as low rates as well established commercial interests, but this arises from the

very nature of the security offered by the farmers. In *Hammer v. Dagenhart*, 247 U. S. 251, it was pointed out that the Constitution did not give Congress any authority to equalize economic conditions by which business done in one State was at a disadvantage compared with that done in another; so, Congress has no authority to equalize economic conditions, between two classes of citizens, with respect to the ability to borrow money from private sources.

If, in order to stimulate agriculture, Congress desires, under its power of appropriation, to lend the public money to farmers at a low rate of interest and easy terms, it is probable that the courts cannot control such action, but the ballot box would quickly stop it.

When, however, Congress, under the alleged guise of the power of appropriation, attempts to accomplish the same result through private capital, *at the expense of the taxing powers of the States*, then, in the language of *Hammer v. Dagenhart*:

"This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, federal and state, to the end that each may continue to dis-

charge, harmoniously with the other, the duties intrusted to it by the Constitution."

The judgment below should be reversed.

FRANK HAGERMAN,
WM. MARSHALL BULLITT,
Counsel for Appellant.

LOUISVILLE, KY.,
October 11, 1920.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

CHARLES E. SMITH,

Appellant,

v.

No. 593

KANSAS CITY TITLE AND
TRUST COMPANY *et al.*,

Appellees.

Brief of Appellee Kansas City Title and Trust Co.

This is a suit by a stockholder to enjoin the defendant company from investing in certain Federal Land Bank bonds and Joint Stock Land Bank bonds issued under authority of the Federal Farm Loan Act as amended, upon the ground that said act as amended is unconstitutional. Defendant moved to dismiss the bill for want of equity. The motion was sustained, and the bill dismissed. Plaintiff appeals.

After the motion to dismiss was filed, the Federal Land Bank of Wichita, Kansas, and the

First Joint Stock Land Bank of Chicago, Illinois, were permitted to intervene on the ground that they were vitally interested in the issues involved in the suit. They adopted the defendant's motion as their own, and were heard on argument in support of the motion. The Attorney General of the United States was represented, and an argument made on his behalf as *amicus curiae*.

By these interventions and appearances, the interests of the titular defendant in the litigation became of secondary importance. The trust company appears rather as a *casus belli* than as a chief belligerent. It desires to make the proposed investment if the act, including the tax exemption features, is valid; it does not desire to make the investment if the act be invalid. The purchase of the bonds would be advantageous to the defendant if they are legal and tax free; otherwise, not.

The interests of the intervenors on the other hand, and of the Attorney General as representing the government, are paramount. The issue involves the life of the Federal Land Banks and the Joint Stock Land Banks, or at least their practical ability to get sustenance through the issuance of tax free bonds, and it involves the power of the government to create these agencies for the financial aid of the agricultural class, which Congress has determined to be for the public welfare.

We desire, therefore, on behalf of the de-

fendant, rather to make the issues clear to the Court than to go over at any length the same ground that is so thoroughly covered by those representing the government and the Land Banks themselves. A clarifying of the issues is often more helpful than a reiteration of argument on one side or the other.

There is but one question in the case: Is the act constitutional? This involves three parts:

Are the provisions referring to Federal Land Banks constitutional?

Are the provisions referring to Joint Stock Land Banks constitutional?

Are the tax exemption provisions constitutional?

The contentions of appellant in his brief, stripped of matters of inducement going only to the policy of the act and not to its validity, may be reduced to their lowest terms as follows:

1. The powers of Congress are limited to those expressly and impliedly granted by the constitution.

2. There is no power to enact this legislation granted to Congress by the constitution, unless it be under the terms of Article 1, Section 8, Clause 1.

3. Article 1, Section 8, Clause 1 confers only the power to collect and expend the public moneys, and this act is not relevant to such power.

The first proposition has been too long established to be the subject of controversy.

The second proposition must likewise be admitted. An examination of the various powers granted to Congress discloses none on which the act in question might be sustained except Article 1, Section 8, Clause 1.

The single question then remains: Is the act relevant to the power to collect and expend the public money?

I.

The decision of this question seems to depend upon whether the Court considers what might have been done or what actually was done under the act. Appellant argues that Federal Land Banks might have been organized with private capital and conducted without public moneys. This was a theoretical possibility, but what was the fact?

The fact was that Congress appropriated \$9,000,000 of public moneys for the purpose of making loans to farmers through the Federal Land Banks. \$8,892,130 was actually paid out for the stock of these banks, and \$8,265,809 was so in use on July 1, 1919. Was this appropriation lawful?

Under Article 1, Section 8, Clause 1, Congress has power to appropriate moneys to provide for the general welfare. It is admitted, or must be

admitted, that the development and encouragement of agriculture is a matter of such vital concern as to come within these provisions. This can hardly be disputed at a time when the prosperity of the entire country and the comfort and happiness of all its citizens is seen to depend so completely upon the increase in agricultural production. Therefore, Congress has power to appropriate moneys to encourage agriculture.

Congress does appropriate moneys to be loaned to farmers at low rates of interest. Does this encourage agriculture? Undoubtedly. Therefore, Congress has power to so appropriate.

Congress provides that this money shall constitute the capital of certain corporations to be formed under its authority, and shall be by such corporations loaned out to farmers, all under the regulation of the federal board created by the act. Is not this an appropriate method of making the loans? The national bank cases establish the propriety of the use by Congress of corporations in the administration of its powers. Therefore, Congress might properly form such corporations and use them in the designated manner.

The public moneys are thus appropriated and paid out for a proper purpose through proper means. Why then is there not a lawful appropriation, lawfully administered?

Can it make any difference that the loans once made are pledged to raise more money to

make more loans? Congress makes an appropriation to furnish seed to farmers. The seed is planted and multiplies. The farmer sells his crop and buys more seed and raises more crops, but the original appropriation and the means of carrying it into effect are not thereby made unlawful.

Can it make any difference that the appropriated money is ultimately to be returned to the public treasury? If, instead of giving seeds to farmers as above suggested, Congress should simply loan seeds or the money to get seeds subject to return after harvest, the appropriation would certainly not be invalidated or the means for making and collecting the loans inappropriate or improper.

Is it not beside the point, therefore, to consider what might have happened when it is so evident what did happen? And, in view of the actual operation under the act, is it helpful to split hairs over the question whether the banks are incidental to the appropriation or the appropriation incidental to the banks? Congress has no express power to protect and foster American industries by means of a tariff. There has long been a controversy between the advocates of a protective tariff and a tariff for revenue only, but this is a controversy of policy and not of power. The courts have never been willing to go behind the acts themselves, although it has been a matter of common knowledge, if not of actual demonstration, that the revenue features were incidental to

the protective features not only in the mind of Congress but in the very provisions of the statutes themselves. It was almost self-evident that the purpose was not to raise money but to exclude commodities. The courts refused, however, to consider motives: the acts did raise revenue, and the manner of so doing was wholly within the discretion of Congress except as limited by the constitution itself.

II.

If, therefore, the appropriation was proper, the means adopted to carry the act into effect must be considered as a whole and not piecemeal. This doctrine is recognized and applied in *First National Bank v. Fellows*, 244 U. S. 416, 37 Sup. Ct. 734. So considered, are not the Joint Stock Land Banks an integral part of the entire scheme and thus sustainable, as well as the Federal Land Banks, under the general welfare clause? They are governmental depositaries and fiscal agents, also, the creation of which is clearly within the power of Congress.

III.

The question of tax exemption must be answered in the same manner as the preceding questions. If Congress has power to create and use

the Land Banks as governmental agencies, there can be no doubt of its power to exempt them from taxation. The policy may be arguable but the power is not. It is self-evident that Congress may protect its own means from state interference, and may of course levy its own taxes upon them or not, as it pleases. There are no grounds against the tax exemption feature except those urged against the banks themselves.

Respectfully submitted,

JUSTIN D. BOWENCK,
*Solicitor for Appellee, Kansas City
Title and Trust Company.*

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JAMES B. HANF

IN THE

Supreme Court of the United States

October Term, 1919

CHARLES E. SMITH,

Appellant,

against

KANSAS CITY TITLE AND TRUST COMPANY,

et al.,

Appellees.

199
No. 555

**BRIEF ON BEHALF OF FIRST JOINT STOCK
LAND BANK OF CHICAGO, INTERVENOR-
APPELLEE.**

GEORGE W. WICKERSHAM,
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Land Bank of Chicago,
Intervenor-Appellee.*



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IN THE
Supreme Court of the United States
October Term, 1919

CHARLES E. SMITH,

Appellant,

against

KANSAS CITY TITLE AND TRUST COMPANY,
et al.,

Appellees.

No. 593

**BRIEF ON BEHALF OF FIRST JOINT STOCK
LAND BANK OF CHICAGO, INTERVENOR-
APPELLEE.**

Statement.

Appeal from a final decree of the District Court of the United States for the Western Division of the Western District of Missouri, dismissing a bill of complaint for want of equity (Record, p. 30).

This appeal involves the constitutionality of the Federal Farm Loan Act, approved July 17, 1916 (39 Stats., p. 360), as amended by an act approved January 18, 1918 (40 Stats., p. 431), and particularly of Sections 26 and 27 of said Act (39 Stats., p. 380), in so far as they authorize the organization of two classes of banks, viz: Federal Land Banks and Joint Stock Land Banks, the issuance of bonds by them, and the exemption of said bonds from taxation.

The case involves the validity of \$626,321 of stock and \$150,600,000 of bonds, issued by Federal Land Banks, and \$8,000,000 of stock and \$41,000,000 of bonds issued by Joint Stock Land Banks, outstanding in the hands of the public, as well as of \$8,626,321 of stock and \$135,000,000 of bonds issued by Federal Land Banks and held in the United States Treasury.

The bill of complaint (Record, pp. 1-18) was filed by plaintiff, a stockholder in the Kansas City Title and Trust Company, a trust company organized under the laws of Missouri, to enjoin it from purchasing for investment pursuant to resolution of its Board of Directors, certain Federal Land Bank bonds and Joint Stock Land Bank bonds, upon the ground that the said bonds and the tax exemption features thereof were invalid, unlawful and unconstitutional. By proper proceedings, the Federal Land Bank of Wichita, Kansas, was permitted to intervene on behalf of itself and all other Federal Land Banks (Rec., p. 20), the First Joint Stock Land Bank of Chicago, Illinois, was permitted to intervene in behalf of itself and all of the other Joint Stock Land Banks (Rec., p. 19); and the United States was heard as *amicus curiae* (Rec., p. 34). By consent of all parties the bill was amended by interlineations, which amendatory matter, it was agreed, should at all times and under all circumstances be treated as if in the original bill as and when filed (Rec., p. 31). The defendant Trust Company moved to dismiss the bill for want of equity (Rec., p. 21). The United States and each of said intervenors, to speed an early disposition of the cause, adopted as their own and were heard upon the defendant's motion to dismiss (Rec., p. 31). After two days' argument before VAN VALKENBURG, J., the motion was granted and a final decree was entered, from which plaintiff was allowed an appeal (p. 31). The appeal was perfected and a motion to advance

was, on November 17th, granted by this Court on account of the nature and public interest of the questions involved.

Case Made by the Bill of Complaint.

The bill shows that since the passage of the Farm Loan Act, the United States has been divided, pursuant to its provisions, into twelve Land Bank Districts, in each of which one Federal Land Bank has been organized, and that up to July 1, 1919, these twelve banks have issued capital stock to the aggregate amount of \$8,892,130, of which, stock to the amount of \$8,265,809 is held by the Treasury Department of the United States; that up to September 30th, 1919, said Federal Land Banks have issued Farm Loan bonds to the amount of \$285,600,000, of which about \$135,000,000 have been purchased and are held in the Treasury of the United States; that up to September 30th, 1919, twenty-seven Joint Stock Land Banks had been incorporated under the Act, with an aggregate capital of \$8,000,000, all of which had been subscribed and \$7,450,000 paid in, and that said Joint Stock Land Banks have issued, under the provisions of the Act, Farm Loan bonds to the aggregate amount of \$41,000,000, which are now outstanding in the hands of the public (Rec., pp. 9-10).

The bill further shows that the Federal Land Banks on September 30, 1919, were the owners of United States bonds to the par value of \$4,230,805 and that the Joint Stock Land Banks, on August 31, 1919, were the owners of United States bonds to the par value of \$3,287,503 (Rec., p. 9): that pursuant to the provisions of Sec. 32 of the Federal Farm Loan Act, as amended in 1918, the Secretary of the Treasury made certain deposits for the temporary use of the Federal Land Banks, out of moneys in the Treasury, a statement whereof is set forth on page 8 of the Record, for which said banks issued their respec-

tive certificates of indebtedness bearing 2 per cent. interest per annum (Rec., p. 8).

That during the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane, respectively, were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having set aside \$5,000,000 for that purpose out of his \$100,000,000 war fund. That the three banks mentioned had made upwards of 15,000 loans of said character, aggregating upwards of \$4,500,000, all of which were secured by crop liens and that the said banks were now engaged in collecting said loans. That the said banks acted in the matter without compensation. That up to the time of filing the bill of complaint, the Secretary of the Treasury had not designated any of the Federal Land Banks, or Joint Stock Land Banks as depositaries of public moneys, nor, except as above stated, had they or any of them performed any duties as depositaries of public money or as financial agents of the Government (Rec., p. 10). Averring that the officers of the Trust Company proposed to buy with its moneys Farm Loan Bonds issued by each class of the Land Banks above described "solely because of its belief in (a) the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation"; that the acts of Congress under which said bonds were issued were unconstitutional and that said bonds, if purchased, would be subject to taxation, despite the exemption in the act of Congress, plaintiff as a stockholder of the Trust Company brought this suit to restrain the alleged unlawful application of its funds (Rec., pp. 15-17).

The Court (VAN VALKENBERG, J.), at the close of the arguments, delivered an oral opinion (Rec., pp. 22-30) in which he sustained the Constitutionality of the Act in all respects, as to both classes of Land Banks, and therefore ordered that the bill be dismissed for want of equity.

The Federal Farm Loan Act.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

"An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

Federal Farm Loan Bureau.

The administration of the Act is placed (Sec. 3) under the direction and control of a Federal Farm Loan Bureau, established at the seat of government, in the Treasury Department, under the general supervision of a Federal Farm Loan Board, consisting of the Secretary of the Treasury, who is ex-officio Chairman of the Board, and of four members appointed by the President, by and with the advice and consent of the Senate. One of the members is to be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of the Board.

Federal Land Banks.

The Board is required, as soon as practicable, to divide the continental United States, excluding Alaska, into twelve districts, apportioned with due regard to the farm loan needs of the country, which shall be known as Federal Land Bank Districts, and to establish in each of said districts a FEDERAL LAND BANK (Sec. 4). Each of these banks must have, before beginning business, a subscribed capital of not less than \$750,000, divided into

shares of \$5.00 each, which may be subscribed for and held by any individual, firm or corporation, or by the government of any state, or of the United States. No dividends shall be paid on the stock owned by the U. S. Government, but all other stock shall share in dividend distributions without preference (Sec. 5). Each National Farm Loan Association and the United States Government are entitled to one vote for each share of stock held by them or it respectively. No other shareholder is permitted to vote (Sec. 5).

The Federal Farm Loan Board is to designate five directors who shall temporarily manage the affairs of each Federal Land Bank, and who shall prepare an organization certificate which, when approved by the Federal Farm Loan Board and filed with the Farm Loan Commissioner, operates to create the bank a body corporate, with the powers enumerated in the Act (Sec. 4). It is made the duty of the Federal Farm Loan Board to open books of subscription for the capital stock of a Federal Land Bank in each Federal Land Bank district, and if within thirty (30) days thereafter any part of the minimum capitalization of \$750,000 of any such bank shall remain unsubscribed, it is made the duty of the Secretary of the Treasury to subscribe the balance on behalf of the United States (Sec. 5). The act imposes no liability upon the shareholders beyond the amount of their respective subscriptions to the stock.

The amending act of January 18th, 1918, which authorizes the Secretary of the Treasury during the years 1918 and 1919 to purchase bonds issued by Federal Land Banks, provides that the temporary organization of any such bank provided for in Section 4, shall be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations shall equal

the amount of its stock held by the United States Government. When these conditions shall be met, the permanent organization provided for in Section 4 is to take over the management of the bank. This permanent organization consists in a Board of Directors composed of nine members, each holding office for three years, six of whom, to be known as Local Directors, shall be chosen by, and be representative of, National Farm Loan Associations, and the remaining three directors, to be known as District Directors, shall be appointed by the Federal Farm Loan Board, and shall represent the public interest. One of the District Directors is to be designated as Chairman of the Board by the Federal Farm Loan Board.

The Federal Land Banks are empowered to invest their funds in the purchase of qualified first mortgages on farm lands situated within the Federal Land Bank District within which they are organized or acting (Sec. 13, par. 2).

National Farm Loan Associations.

Loans on farm mortgages are to be made to co-operative borrowers through the organization of corporations to be known as National Farm Loan Associations by persons desiring to borrow money on farm mortgage security under the terms of the Act. Ten or more natural persons who are the owners or about to become the owners of farm land qualified as security for mortgage loans, and who desire to borrow money on farm mortgage security, may unite to form a National Farm Loan Association by complying with the provisions of Section 7 of the Act.

The articles of association when presented to the Federal Land Bank shall be accompanied by the written report of a Loan Committee appointed in conformity with the Act, and by proof that each of the subscribers

is the owner, or is about to become the owner, of farm land, qualified under Section 12 as the basis of a mortgage loan; that the loan desired by each person is not more than \$10,000, nor less than \$100, and that the aggregate of the desired loan is not less than \$20,000; it must also be accompanied by a subscription to stock in the Federal Land Bank equal to five per centum (5%) of the aggregate sums desired on mortgage loans (Sec. 7). The Federal Land Bank must then have an appraisal made of the land, and report to the Federal Farm Loan Board its recommendation, upon which, if favorable, the Board shall grant a charter to the applicants, designating the territory in which the proposed association may make loans, whereupon the association is authorized and empowered to receive from the Federal Land Bank of the district sums loaned to its members under the terms and conditions of the Act. Thereafter any National Farm Loan Association may secure for any of its members a loan on first mortgage from the Federal Land Bank of the district, but, in connection with such application, it must subscribe and pay in cash for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, such stock to be held by the Land Bank as collateral security for its repayment, the association receiving any dividends accruing and payable on said stock while it is outstanding. Upon the payment of the mortgage loan the stock shall be retired. No persons but borrowers on farm land mortgage shall be members or shareholders of National Farm Loan Associations. Each shareholder is entitled to one vote for each share held by him at the elections of directors and other shareholders' meetings, provided no one shareholder shall cast more than twenty (20) votes. Shareholders in the National Farm Loan Associations are made individually responsible equally and ratably for the debts of the Association, to the extent of the amount of stock owned by them respectively at its

par value, in addition to the amount paid in and represented by their shares (Sec. 9).

Whenever any National Farm Loan Association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank in its district, it must subscribe for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, the subscription to be paid in cash upon the granting of the loan. Such capital stock shall be held by the Land Bank as collateral security for the repayment of the loan, but the Association shall be paid any dividends accruing and payable on the capital stock while it is outstanding. Such stock may, in the discretion of the directors and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and shall be so retired upon full payment of the mortgage loan. In such event, the National Farm Loan Association must pay off at par and retire the corresponding shares of its stock which were issued when the Land Bank stock so retired was issued; but it is further provided that the capital stock of the Federal Land Bank shall not be reduced under an amount less than five per cent. (5%) of the principal of the outstanding Farm Loan Bonds issued by it (Sec. 7). The shares in National Farm Loan Associations shall be of the par value of \$5.00 each. No persons but borrowers on farm land mortgages may be members or shareholders of a National Farm Land Association.

Any person desiring to secure a loan through a National Farm Loan Association under the provisions of the Act shall make application for membership and shall subscribe for shares of stock in such Farm Loan Association, to an amount equal to 5 per cent. of the face of the desired loan, to be paid in cash on the granting of the loan. Upon such payment, the applicant becomes the owner of one share of stock in said Loan Association for each \$100 of the face of the loan. Such stock shall be

paid off at par and retired upon full payment of the loan. It shall be held by the Association as collateral security for the loan, but the borrower shall be entitled to any dividends accruing and payable on the stock while it is outstanding (Sec. 8). Any person desiring to secure a loan through a National Farm Loan Association may at his option borrow from the Federal Land Bank, through such association the amount necessary to pay for shares of stock subscribed for by him in the National Farm Loan Association, such sum to be made a part of the face of the loan, and to be paid off in amortization payments (Sec. 9). After the subscriptions to the capital stock by a National Farm Loan Association shall amount to \$750,000 in any Federal Land Bank, said bank must apply semi-annually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original stock, twenty-five per cent. (25%) of all sums thereafter subscribed to the capital stock until such original capital stock is retired at par.

At least 25 per cent. of that part of the capital of any Federal Land Bank for which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets. Not less than 5 per cent. of such capital must be invested in U. S. Government Bonds (Sec. 5).

Federal Farm Loans.

The loans which Federal Land Banks may make upon first mortgages on farm lands are very carefully regulated and restricted by the provisions of Section 12 of the Act. The Federal Land Banks by Section 13 are empowered, subject to the limitations and requirements of the Act, to issue and sell Farm Loan Bonds of the kinds described in the Act, to invest funds in their possession in qualified first mortgages on farm lands, to receive and to deposit in trust with the Farm Loan Registrar for

the district, to be held by him as collateral security for Farm Loan Bonds, first mortgages upon farm land, qualified under Section 12, and, with the approval of the Federal Farm Loan Board, to issue and sell their bonds secured by the deposit of first mortgages on qualified farm lands as collateral, in conformity with the provisions of Section 18 of the Act. By the amendment of January 18th, 1918, the Secretary of the Treasury was empowered during the years 1918 and 1919, to purchase Farm Loan Bonds issued by the Federal Land Banks to an amount not exceeding \$100,000,000 in each year, and any Federal Land Bank was authorized at any time to repurchase at par and accrued interest, for the purpose of redemption or resale, any of the bonds so purchased from it and held in the U. S. Treasury. It is also provided, that the bonds of any Federal Land Bank so purchased and held in the Treasury one year after the termination of the pending war shall, upon thirty (30) days' notice from the Secretary of the Treasury, be redeemed and repurchased by such Bank at par and accrued interest. By Section 15, it is provided that whenever, after the Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that National Farm Loan Associations have not been formed and are not likely to be formed, in any locality, because of peculiar local conditions, the Board may in its discretion authorize Federal Land Banks to make loans on farm lands through agents approved by the Board, on the terms and conditions and subject to the restrictions prescribed in that Section.

Joint Stock Land Banks.

Another and different class of corporations to accomplish the objects of the Act, to be known as Joint Stock Land Banks, is provided for in Section 16. The capital of these corporations must be provided wholly by private subscription. The Government is not authorized to subscribe for or acquire any stock in this class of banks. They are to be organized by not less than ten natural persons subject to the requirements and under the conditions set forth in Section 4 of the Act, so far as the same are applicable. The Board of Directors shall consist of not less than five members. Each shareholder shall have the same voting privileges as holders of shares in national banking associations, and is subject to the same double liability for debts of the Bank as is imposed upon shareholders in National Banks. A Joint Stock Land Bank shall be authorized to do business when capital stock to an amount of at least \$250,000 has been subscribed, and one-half paid in cash, the balance remaining subject to call by the Board of Directors, and a charter issued by the Federal Farm Loan Board. Such a bank may not issue any bonds until after the capital stock is entirely paid up.

"Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable."

(Sec. 16, par. 3.)

Federal Land Banks may issue Farm Loan Bonds up to twenty (20) times the amount of their capital and surplus (Sec. 14). Joint Stock Land Banks are limited to the issue of Farm Loan Bonds not in excess of fifteen (15) times the amount of their capital and surplus.

No Federal Land Bank shall have power,

"SECOND: To loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen."

"THIRD. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section twelve of this Act, and those taken as additional security for existing loans" (Sec. 14).

Joint Stock Land Banks are not similarly restricted, nor are they subject to the control which the Federal Farm Loan Board is given over the rates of interest to be charged by Federal Land Banks for loans made by them (Sec. 17, par. b); but no loan on mortgage may be made by *any* bank under the Farm Loan Act at a rate exceeding 6 per cent. per annum, exclusive of amortization payments (Sec. 12, par. 3rd), and Joint Stock Land Banks in no case shall charge a rate of interest on farm loans exceeding by more than one per cent. (1%) the rate established for the last series of Farm Loan Bonds issued by them (Sec. 16), which rate may not exceed 5 per cent. per annum (Sec. 20). Federal Land Banks are authorized to charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees, not exceeding the actual cost of appraisal and the determination of title (Sec. 13, par. 9th). Joint Stock Land Banks shall in no case receive any commission or charge not specifically authorized by the Act.

Section 12 imposes very definite terms and conditions upon the making of loans by the Federal Land Banks.

By Section 16, Joint Stock Land Banks are exempted from certain of those restrictions, but it is provided

"that no loans shall be made [by Joint Stock Land Banks] which are not secured by first mortgages on farm lands within the State in which such . . . bank has its principal office, or within some one State contiguous to such State."

The Joint Stock Land Banks are made subject to all other restrictions on mortgage loans imposed on Federal Land Banks in Section 12 of the Act. In general, these restrictions, thus made applicable, require each mortgage to contain agreements for the repayment of the loan on an amortization plan (Sec. 12, par. 2nd); limit the rate of interest to be charged on the loan to six per cent. (6%), exclusive of amortization payments; and provide that the loan shall not exceed fifty per cent. (50%) of the value of the land mortgaged, and twenty per cent. (20%) of the value of permanent insured improvements thereon.

Deposits.

Federal Land Banks are authorized to accept deposits of securities or current funds from National Farm Loan Associations holding their shares, but to pay no interest on such deposits, and to buy and sell United States bonds (Sec. 13). Joint Stock Land Banks are restricted to receiving deposits from their own stockholders.

Farm Loan Bonds.

The provisions for the issue of Farm Loan Bonds secured by first mortgages on farm lands, or United States Government bonds, as collateral, which must be deposited with and held in trust by the Federal

Farm Loan Registrar, are the same in the case of both the Federal Land Banks and the Joint Stock Land Banks. In each case, every step in the issue is made subject to approval of the Federal Farm Loan Board (Secs. 18, 19, 20, 22). The bonds are to be prepared and delivered to the banks by the Farm Loan Board (Sec. 20). The farm mortgages or U. S. bonds which constitute the collateral security for the bonds, whether issued by Federal Land Banks or Joint Stock Land Banks, must be deposited with and held by the Farm Loan Commissioner (Secs. 18, 19). By Section 16, bonds issued by the Joint Stock Land Banks are required to be so engraved as to be readily distinguishable in form and color from Farm Loan Bonds issued by Federal Land Banks, and otherwise to bear such distinguishing marks as the Federal Farm Loan Board shall direct. Such bonds issued by Joint Stock Land Banks are to be in form prescribed by the Federal Farm Loan Board, and it must be stated in such bonds that the Bank is organized under Section 16 of the Act, is under Federal supervision, and operates under the provisions of the Act (Sec. 16). By Section 21, every Federal Land Bank in effect is made guarantor for the payment of all Farm Loan Bonds issued by all of the other Federal Land Banks. Every bond issued by a Federal Land Bank must carry a certificate signed by the Farm Loan Commissioner to the effect

"that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authorities; that it is issued against collateral security of the United States Government bonds or indorsed first mortgages on farm lands at least equal in amount to the bonds issued, and that all Federal Land Banks are liable for the payment of each bond."

Application of Amortization Payments.

By Section 22, amortization and other payments on the principal of first mortgages held by the Farm Loan Registrar as collateral security for the issue of Farm Loan Bonds constitute a trust fund in the hands of the Federal Land Bank or Joint Stock Land Bank receiving the same, and shall be applied or employed as follows:

"In the case of a Federal land bank—

"(a) To pay off farm loan bonds issued by said bank as they mature.

"(b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.

"(c) To loan on first mortgages on farm lands within the land bank district, qualified under this Act as collateral security for an issue of farm loan bonds.

"(d) To purchase United States Government bonds."

"In the case of a Joint Stock Land Bank—

"(a) To pay off farm loan bonds issued by said bank as they mature.

"(b) To purchase at or below par farm loan bonds.

"(c) To loan on first mortgages qualified under section sixteen of this Act.

"(d) To purchase United States Government bonds."

Bonds so purchased must forthwith be deposited with the Federal Farm Loan Registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Section 23, respecting the creation of reserves, applies

equally to Federal Land Banks and Joint Stock Land Banks, and authorizes the declaration of dividends to shareholders of the respective banks of the balance of net earnings after creating the required reserves.

Tax Exemption.

Section 26 provides as follows:

"That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks and farm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

"Nothing herein shall be construed to exempt the real property of federal and joint stock land banks and national farm loan associations from either State, county or municipal taxes to the same extent according to its value as other real property is taxed."

Farm Loan Bonds Trust Investments.

By Section 27, Farm Loan Bonds issued under the Act by Federal Land Banks or Joint Stock Land Banks are made lawful investments for all fiduciary and trust funds, and may be accepted as security for all public deposits. Any member bank of the Federal Reserve System is authorized to buy and sell Farm Loan Bonds issued under the authority of the Act, and any Federal Reserve bank may buy and sell Farm Loan Bonds issued under the same, to the same extent and subject to the same limitations as are placed upon the purchase and sale by said banks of State, county, district and municipal bonds by Subdivision b, Section 14, of the Federal Reserve Act.

Receivership.

By Section 29, in the event of insolvency or default in the payment of any obligation, Federal Land Banks and Joint Stock Land Banks respectively are made liable to receivership at the direction of the Farm Loan Board.

Treasury Deposits in Federal Land Banks.

Section 32 authorizes the Secretary of the Treasury to make deposits for the temporary use of any Federal Land Bank out of money in the Treasury not otherwise appropriated, provided the aggregate of such deposits shall not at any one time exceed the sum of Six million dollars (\$6,000,000).

Designation of Land Banks as Depositaries of Public Money and Fiscal Agents.

Section 6 provides:

"That all Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government as may be required of them. And the Secretary of the Treasury shall require of Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

Scheme of Act.

Generally speaking, it is apparent from this summary, that the scheme of the act contemplates the procurement of large sums of money for the purpose of stimulating agricultural development throughout the country by loaning the same on farm mortgages for the development of farm lands, at low rates of interest. The moneys to be so loaned are in part to be furnished directly by the United States, through subscriptions to the capital stock of the Federal Land Banks, intended to be temporary and to be replaced by subscriptions through Farm Loan Associations; in part through subscriptions by private in-

dividuals to the capital stock of both of the two classes of Land Banks to be organized under the Act. These moneys in turn are to be replenished and augmented through the sale of bonds issued by Federal Land Banks, or Joint Stock Land Banks, secured by the deposit as collateral of farm loan mortgages or United States bonds, under the supervision of the Federal authorities created by the Act. The bonds thus authorized are declared to be instrumentalities of the United States in the accomplishment of the purposes of the Act, and therefore are exempted from taxation. The Land Banks so authorized are also given certain of the powers usually vested in banks of deposit and may be made Fiscal Agents of the United States.

The system is designed to provide for the development of agriculture substantially what has been accomplished for commerce and industry by the national banking system, and also to provide an additional source to those previously existing, from which to draw loans to the United States on its bonds. The banks which Congress has seen fit to create for the purpose of carrying out the purposes of this Act, are not primarily banks of general deposit and issue; they are created to extend to the farmers facilities as responsive to their needs as those furnished by the banks of deposit and discount to the commercial world. They are to serve a great public purpose, the vital importance of which to the national welfare, has been strikingly demonstrated during the Great War.

The Appellant devotes a page or more of his brief to an *ad captandum* effort to discredit the Farm Loan Act by the assertion that it was based

“upon the German plan of collective and co-operative borrowing of money on long-time farm mortgages. The words ‘German plan’ are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany.”

Again, he says:

"It is quite significant that the plan is German, as the real question here is whether there has been enacted a law inimical to the spirit of our institutions and contrary to the provisions of our Constitution."

"Merely because the system is German," he says, "does not *necessarily* imply that it is illegal" (Brief, pp. 6, 8). A striking admission!

Without commenting upon the taste displayed in submitting suggestions of such nature to this Court, nor of the Appellant's appreciation of the weakness of his objections to the constitutionality of the Act exhibited by the attempt to buttress arguments by an appeal to national prejudice, the fact is, that in favorably reporting the bill to the House of Representatives on May 3, 1916, the Committee on Banking and Currency stated that

"Whatever its obligations to successful foreign systems," the bill "provides for a distinctively American system of rural credits and endeavors to embody, and it is confidently believed, does embody, the best thought which the thorough discussion of the past years has developed with reference to rural-credits legislation."

And again, that

"Your Committee has endeavored to draft a bill which when enacted into law shall provide an American system dedicated to the peculiar needs of the American farmer and so organized as to give service as efficiently as any system of rural credits in any other country in the world."

[64th Cong., 1st Session, Report No. 630 on Rural Credits. To accompany H. R. 15004.]

But considerations of this nature are wholly irrelevant in this Court, where the only inquiry is whether or not Congress exceeded its constitutional powers in the enactment of the statute under consideration.

ARGUMENT.

I.

The general purposes of the Farm Loan Act might have been attained by Congress through the direct exercise of the powers of taxation and borrowing.

The appellant will hardly dispute in this Court certain propositions which he expressly conceded on the argument in the District Court, viz., that Congress having power to borrow money and to levy and collect taxes, can appropriate public moneys under the general welfare clause, even for a purpose not expressly authorized by the Constitution; that the stimulation of agriculture is a public purpose for which Congress may appropriate moneys, and that it may apply the moneys so appropriated through the mechanism of a corporation created or adapted by it for the purpose. These propositions are established by authority beyond the point of serious dispute.

(a) "Up to the time the Federal Reserve Act was enacted, our whole banking and credit system was established without reference to the special need of the farmer. The Federal Reserve Act of December 23, 1913 (38 Stats., 251), for the first time in our banking legislation gave consideration to the peculiar needs of the farmer" (H. R. Report 630, May 3, 1916). Section 13 of that act empowered any Federal Reserve bank to receive from any member bank and discount notes, drafts

and bills of exchange issued or drawn for agricultural purposes, or the proceeds of which were used for such purposes, including notes, etc., secured by staple agricultural products or other goods, wares or merchandise, provided that such notes, drafts and bills should mature within not longer than six months, and provided that the amount of negotiable paper of that class should be limited to a percentage of the capital of the Federal Reserve Bank to be ascertained and fixed by the Federal Reserve Board. Section 24, as amended September 7, 1916 (39 Stats., 754), empowered any national banking association, not situated in a central reserve city, to make loans secured by improved and uncumbered farm lands within its district, or within 100 miles from the place of its location, for a period not exceeding five years, such loans in the aggregate not to exceed 25 per cent. of the lending bank's capital and surplus, nor one-third of its time deposits.

These provisions met only a part of the needs of the farmers of the country, and failed to furnish that which was most essential to the development of the Nation's agricultural resources, namely, advances to be used for the purchase or improvement of farm lands, repayable by amortization over a period of years long enough to enable the borrower to repay the loan out of the profits realized through the development of the property. A recognition of this lack led to the enactment of the Farm Loan Act.

The House Committee on Banking and Currency reported on May 3, 1916 (Report 630):

"It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For

example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions.

The creation of such a national system of rural credits is a great public purpose which Congress might have provided for, either by direct appropriation, or through the existing national and reserve bank system, or by the creation of new agencies especially adapted to the designated end.

The Federal Farm Loan Act is entitled,

"An Act To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

The system which it establishes is characterized by the Secretary of the Treasury in his report to Congress for the year 1918, as

"the great governmental agency for financing a basic industry of the United States—that of agriculture."

(b) The power of Congress to raise and appropriate money for the general purpose of aiding in the development of agriculture in general hardly can be questioned.

It rests upon the powers granted by Article I, Section 8, of the Constitution, which reads:

"The Congress shall have power

"(1) To lay and collect taxes, duties, imposts, excises, to pay the debts and provide for the common defense and general welfare of the United States;

• • • • •
 "(2) To borrow money on the credit of the United States;

• • • • •
 "(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The weight of authority is to the effect that the proper construction of paragraph (1) above quoted is, that the power to lay and collect taxes is not unlimited, but is qualified by the second part of the paragraph, namely, *for the purpose of* providing for the common defense and promoting the general welfare (*Miller's Lectures on The Constitution*, p. 230; *Story on The Constitution*, Secs. 907, 908, 909, 922).

(c) It is equally well settled, that the power of taxation thus granted is not confined to the purpose of revenue, nor limited in its objects to those purposes which are enumerated in the paragraphs following the first in Section 8 of Article I (1 *Story*, Secs. 925, 975-978).

In Section 978, Judge STORY refers to Hamilton's Report on Manufactures, 1791, and in Section 979, to President Monroe's Message concerning the bill appropriating for repairs to the Cumberland road.

In the report, Hamilton pointed out that the power of Congress to raise money was plenary,

"and the objects to which it may be appropriated are no less comprehensive than the payment of public debts and the providing for the common defense and general welfare."

Considering this phrase, "general welfare," he said:

"And there seems no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *so far as regards an application of money*. The only qualification of the generality of the phrase in question which seems to be admissible is this, that the object to which an appropriation of money is to be made must be *general not local*—its operation extending in fact or by possibility throughout the union, and not being confined to a particular spot."

Story, commenting on these opinions, refers to the practice of the government as having been "entirely in conformity to the principles here laid down." Appropriations, he says,

"have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be considered in their broad, or their narrow sense" (§991).

And he refers to a number of striking instances of appropriations for purposes, none of which was within any of the express powers granted in the succeeding paragraphs of Section 8 after paragraph (1).

See also Willoughby on *The Constitution*, Sec. 269.

(d) The only limitation upon the power of Congress to appropriate moneys is that the purpose shall be public and general as distinguished from private. Even this limitation is not always observed.

It seems to have been recognized from the foundation of the government that the power of Congress to appropriate is co-extensive with the power to tax (*Story on Constitution*, Secs. 922, 924), and in fact, in the exercise of the power of appropriation, the practice has been even broader than the scope of the power to tax. As Prof. Willoughby says:

"The limitation that an appropriation should be for a public purpose has been without practical effect as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and as regards the restriction that appropriations shall be in aid of enterprises which the federal government is empowered to undertake, the doctrine has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate" (§269).

"It has been generally held, however, that a tax may be levied avowedly and exclusively not for revenue but as a means for regulating a matter which is within the legislature's power to control. Thus in *Veazie Bank v. Fenno*, 8 Wall., 533, the power of Congress to levy a tax as a means of regulating the currency is upheld."

Willoughby on The Constitution Sec. 263, citing *Head Money Cases*, 112 U. S., 580.

Congress also may by a law framed as a tax measure in effect subject to regulation or even to destruction, on enterprise over which it has no direct power of control, 1 *Willoughby*, Sec. 263, citing *McCray v. U. S.*, 135 U. S.,

27, upholding a prohibitive tax on oleomargarine artificially colored to resemble butter.

See also *Flist v. Stone Tracy Co.*, 220 U. S., 107, 169.

The great scope of the legislative power to tax is described by Judge COOLEY (*Const. Lim.*, pp. 184-185) in the following language:

"Taxes should only be levied for those purposes which properly constitute a public burden. But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion which cannot be controlled by the courts, except perhaps where its action is clearly evasive, and where under pretence of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives."

Willoughby (Sec. 268) says, that while the validity of the proposition that taxation can be levied only for public purposes is beyond dispute, judicial records furnish comparatively few instances of tax levies being held void for this reason:

"This is due in the first place to the fact that not often do the laws expressly state the purpose for which a tax is levied, and in the second place, where this purpose is stated, the courts will, in deference to the legislative judgment, construe the purpose to be a public one if it is possible to do so."

He quotes *Brodhead v. City of Milwaukee*, 19 Wis., 624, where it was said:

"To justify the court in arresting the proceedings and declaring a tax void, the absence of all possible public interest in the purpose for which the funds are raised must be clear and palpable to every mind at the first blush."

Willoughby distinguishes *Loan Association v. Topeka*, 20 Wall., 655, in that the case did not involve a law levying a tax, but one authorizing towns to issue bonds payable to private manufacturing companies to encourage and aid them in establishing their plants within their respective jurisdictions. It was there held by the Court that inasmuch as taxes would have to be levied for the payment of these bonds, the law in effect attempted to authorize the towns to levy taxes in aid and encouragement of a private purpose, and was, therefore, void. MILLER, J., said, referring to decisions which had upheld taxation in aid of the building of railroads, that in all these cases the decision turned upon the finding that the building of a railroad was for a public purpose; that railroads had not lost this public character because constructed by individual enterprise aggregated into a corporation. It was further said (p. 664):

"The courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects and purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to these and is sanctioned

by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

United States v. Gettysburg Railway, 160 U. S., 668, involved the constitutionality of an act of Congress providing for the acquisition, through the exercise of the power of eminent domain, of property at Gettysburg, to be used for the purpose of preserving the lines of the great battle fought there, and for properly marking with tablets the positions occupied by the various commands of the armies on that field, for opening and improving avenues along the positions occupied by troops, etc. Appropriations had been made for the purpose of carrying out the provisions of the act. The plans made pursuant thereto involved taking lands which the Gettysburg Electric Railway Company was occupying as a part of its right of way. The District Court held the act to be unconstitutional. This was reversed in the Supreme Court, PECKHAM, J., writing the opinion, the initial statement of which is that

"The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land. It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution."

It was then held that the proposed use to which this land was to be put was a public use within this limitation.

"Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and

to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with the appropriate exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description."

The Court pointed out the significance of the battle of Gettysburg, the importance of the issues involved, the valuable lessons in the art of war and in patriotism that could be taught therefrom, and said:

"Such a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country."

In the *Legal Tender Case*, 110 U. S., 421, the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war, was upheld. The Court (per GRAY, J.) said (p. 444):

"The words 'to borrow money,' as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.

"The power 'to borrow money on the credit of the United States' is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds,

bills or notes; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States, *Weston v. Charleston City Council*, 2 Pet., 449; *Banks v. Mayor*, 7 Wall., 16; *Bank v. Supervisors*, 7 Wall., 26. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government. So much is settled beyond doubt * * *."

It is true that in *United States v. Realty Co.*, 163 U. S., 427, the Supreme Court declined to pass upon the constitutionality of provisions in the Tariff Act of 1890 which granted bounties to producers of sugar within the United States, because those provisions had been repealed and the specific question before the Court was as to the right of Congress to recognize the moral claim of producers who had qualified under the bounty act to receive payments from the government, but whose claims had not been paid before the repeal of the law, and in whose favor Congress had passed an act providing for payment of those claims. It was held that whether the bounty act were constitutional or not, the producers had a moral claim against the government, which Congress had a right to recognize, even though the claim were not of a strictly legal character. The Court said:

"Of course, the difference between the powers of the state legislatures and that of the Congress of the United States is not lost sight of, but it is believed that in relation to the power to recognize and to pay obligations resting only upon moral considerations or upon the general principles of

right and justice, the Federal Congress stands upon a level with the state legislature" (p. 443).

(e) The encouragement, stimulus and improvement of agriculture is a public purpose, and appropriations for such objects are for the general welfare. Such appropriations have been made by Congress from an early date in our history. As Chief Justice MARSHALL in *M'Culloch v. Maryland*, 4 Wheat. 316, 401, said:

"It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted, if not put at rest, by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."

As early as 1839, Congress passed an appropriation bill for the collection of statistics on agriculture by the Commissioner of Patents (5 Stats., 354).

In 1857, this power was enlarged to the extent of directing the Commissioner to procure and distribute cuttings and seeds, and to investigate the consumption of cotton throughout the world (11 Stats., 226). From time to time, similar appropriations were made, and on May 15th, 1862, the Department of Agriculture was created (12 Stats., 387), and the statistics and powers of the Commissioner of Patents were transferred to this

new department. The act creating this department (now U. S. R. S. Sec. 520) reads as follows:

"There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate and distribute among the people new and valuable seeds and plants."

In 1889, an appropriation was made to the Entomological Commission under the Department of the Interior for the investigation of the Rocky Mountain locust or grasshopper and the cotton worn, but it was provided that such work in the future should be under the Department of Agriculture (21 Stats., p. 259).

Numerous appropriations have been made for the use and purposes of the Department of Agriculture since its creation. Thus, in 1863, an appropriation was granted (12 Stats., 691),

"for the collection and compiling of agricultural statistics; for promoting agricultural and rural economy; and the procurement, propagation, and distribution of cuttings and seeds of new and useful varieties; and for the introduction and protection of insectivorous birds; and for the purpose of establishing a laboratory, with the necessary apparatus for practical and scientific experiments in agricultural chemistry * * *."

In 1884, a bureau of the Department of Agriculture was organized (23 Stats., 31), known as the Bureau of Animal Industry, to investigate and collect such information about domestic animals, their diseases, etc.,

"as shall be valuable to the agricultural and commercial interests of the country."

In 1890, Congress created a Weather Bureau in the Department of Agriculture, the duties of which formerly had been performed by the Signal Corps of the Army (26 Stats., 653). It was provided:

"That the Chief of the Weather Bureau * * * shall have charge of the forecasting of the weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation * * *, the reporting of temperature and rainfall conditions for the cotton interests, the display of frost and cold wave signals, the distribution of meteorological information in the interests of agriculture and commerce * * *."

U. S. Comp. Stats., Section 8870, July 2nd, 1862, Chap. 130, Section 4, 12 Stats., 503, amended March 3rd, 1883, Chap. 102, 22 Stats. 484, provides for the establishment of State Agricultural Colleges. These may be formed from the proceeds of the sale of lands apporportioned to the States, and from the sale of land scrip, these proceeds to be kept as a trust fund.

Section 8871 provides further appropriations for these colleges, in each of which there is located an agricultural experiment station.

Section 8879 enacts:

"It shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to

test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective States or Territories."

(March 2nd, 1887, Chap. 314, Sec. 2, 24 Stats., 440.)

Section 776, Comp. Stats. (March 2nd, 1889, Chap. 411, Sec. 1, 25 Stats., 960), is as follows:

"Irrigation Survey: For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation and the segregation of irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and for ascertaining the cost thereof, and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees, in field and office, the cost of all instruments, apparatus, and materials, and all other necessary expenses connected therewith, the work to be performed by the geological survey under the direction of the Secretary of the Interior * * *."

In 1917, Congress passed an act in regard to pink bollworm (40 Stats., 374), a menace to cotton, which is as follows:

"On account of the menace to cotton culture in the United States arising from the existence of the pink bollworm in Mexico, the Secretary of Agriculture in order to prevent the establishment and spread of such worm in Texas and other parts

of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in co-operation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to co-operate with the Mexican government or local Mexican authorities in the extermination of local infestations near the border of the United States."

Provisions also are contained in the statutes for the preparation and issue periodically of farmers' bulletins (34 Stats., 690), for the investigation and demonstration within the United States to determine the best method of obtaining potash on a commercial scale (39 Stats., 465), and for many other objects of real or supposed interest to the agricultural interests of the country.

Indeed, so greatly have the activities of the Department of Agriculture been increased and diversified in recent years that its disbursements of appropriations made by Congress for purposes within its jurisdiction reached in 1917 the sum of \$29,587,148.95, and in 1918 the sum of \$45,759,461.46. The last mentioned sum included the following amounts:

For stimulating agriculture and facilitating distribution of products	\$6,349,055.19
Plant industry expenses.....	2,099,749.88
Purchase of seeds	245,270.98

None of these objects is within the expressed powers of Congress. They rest for their authority on the power to levy taxes to provide for the common defence and promote the general welfare of the Union, and to appropriate moneys so raised to such purposes.

It cannot be denied that Congress, if it chose, instead of accomplishing the purposes of the Farm Loan Act by the mechanism of the different classes of corporations

authorized by it, might have appropriated moneys to be raised by taxation, or provided for the annual issue and sale of government bonds, the proceeds realized in either case to be loaned out on farm mortgages, under the same restrictions as to interest, terms of repayment, etc., as those contained in the Farm Loan Act, under the direct administration of the Treasury or of any other department of the United States Government.

The vital importance to the nation of encouraging the development of its agricultural resources has been abundantly demonstrated during the recent war. It is equally important to the immediate future. No satisfactory development will be possible unless the farmers can secure needed moneys at moderate rates of interest and on easy terms of repayment. The ordinary banks of issue and discount cannot bear this burden. The rates and terms exacted by the great moneyed and insurance corporations, even if the funds at their disposal were adequate—which they are not—are more onerous than those which the government through the mechanism of the Farm Loan Act can provide. There is no public purpose more vital to the entire nation than that which moved Congress to the enactment of this law. The appellant wholly misses its object and the great public importance of its enactment, in his imperfect and prejudiced interpretation of its purpose and meaning. The *main* purpose of the agencies created by the act is the performance of the great governmental function of aiding in the stimulation and development of the agriculture of the country; the private and proprietary features of the corporations authorized, with their closely restricted possible profits, are but incidental and secondary.

II.

Having the power to raise money for the purposes under consideration by taxation or borrowing, and to apply it directly, through the Treasury Department or any other department of the Government selected for the purpose, Congress may accomplish the same ends through corporate instrumentalities adapted to or created for the purpose.

Congress is the exclusive judge of the method of accomplishing these ends. It may create corporations empowered to raise the necessary funds by stock subscription bond issue or deposits, to be loaned on farm mortgages, regulating the method of conducting the business so as to ensure its successful prosecution, and aiding, so far as it may deem expedient, by the loan of government funds or credit. This it first attempted through the National Banking Associations and the Federal Reserve Banks. The inadequacy of that machinery being recognized, the system embodied in the Farm Loan Act was adopted.

(a) Since the great cases of

McCulloch v. Maryland, 4 Wheat., 316, and
Osborn v. Bank, 9 Wheat., 738,

the power of Congress to create corporations to carry out any of its powers no longer can be questioned.

The power was held to be included in the right of any sovereign government which is empowered to do a particular act and has imposed upon it the duty of performing that act, to be allowed to select the means according to the dictates of reason.

In the *McCulloch* case, the Chief Justice said:

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional" (p. 421).

"The Congress of the United States, being empowered by the Constitution to regulate commerce among the several States, and to pass all laws necessary or proper for carrying into execution any of the powers specifically conferred, may make use of any appropriate means for this end. As said by Chief Justice MARSHALL, 'The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great, substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished.' Congress, therefore, may create corporations as appropriate means of executing the powers of government, as, for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the states." GRAY, J., in *Luxton v. North River Bridge Co.*, 153 U. S., 525, 529.

In that case it was held (p. 530) that

"although Congress may, if it sees fit and as it has often done, recognize and approve bridges erected by authority of two States across navigable waters between them, it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

(b) The circumstance that capital stock of the Federal Land Banks may, and that of the Joint Stock Land Banks must be subscribed and held by private individuals, and that profits realized in the business of each may be distributed among such shareholders, does not make the enterprise a private, not a public one, nor restrict the powers of Congress over the corporations, their property or business.

In the First and Second Banks of the United States, the government owned about one-fifth of the capital stock, the remaining four-fifths being held by the public. None of the stock of the Bank of England is owned by the British Government. "The Operation of the New Bank Act, 1914," by Conway & Patterson, p. 39.

The constitutionality of the act creating the United States Bank was upheld upon the ground that it was created for public purposes, and was adopted by Congress as an expedient method of exercising the powers vested in it to lay and collect taxes, to borrow money, etc.; that the powers given to the Congress implied ordinary means of execution, and that a corporation was a convenient, a useful, and an essential instrument in the prosecution of the fiscal operations of the government. See *Osborn v. Bank*, 9 Wheat., 738, 860.

Answering the question, why it is that Congress can incorporate or create a bank, MARSHALL, C. J., said (p. 861):

"This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of the government."

The national banks authorized to be established under the Act of Congress of June 3rd, 1864, were to be formed by private individuals who should subscribe and hold the stock and distribute among themselves by way of dividends all the profits of the enterprise. Yet their constitutionality was upheld, resting, as the Supreme Court said in *Farmers' National Bank v. Dearing*, 91 U. S., 29, on the same principle as the act creating the Second Bank of the United States:

"The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them, Congress is the sole judge" (pp. 33-34).

Davis v. Elmira Savings Bank, 161 U. S., 275;

Owensboro National Bank v. Owensboro, 173 U. S., 664;

Easton v. Iowa, 188 U. S., 220;

to the same effect.

(c) Congress is the sole judge of the extent and measure of the powers to be conferred upon the banks or other corporations which it creates to carry out purposes which it might constitutionally accomplish by other

methods. The fact that the stock of such corporations is to be subscribed and held by private parties is wholly immaterial.

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

MARSHALL, C. J., in *M'ulloch v. Maryland*,
4 Wheat., 316, 421.

In *Easton v. Iowa* (*supra*), the conclusion was reached that, as Congress had power to create a system of national banks, it was the judge as to the extent of the powers which should be conferred upon them, and had the sole power to regulate and control the exercise of their operations. The circumstance that the stock of the national banks was to be subscribed and owned by private individuals, in all those cases was regarded as entirely irrelevant to the consideration of the question whether or not Congress had power to erect and protect them.

Appellant's contention that Congress has no power to provide for the organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations, etc., exempt from taxation, need not be disputed if there were no other consideration involved. But where such corporations, so empowered, as in the case of national banks, or in the present instance, are authorized by Congress for some public governmental purpose as well, their legality is unquestionable. In its application to the Federal Farm Loan System, the contention is completely met by

the following language from the opinion of Chief Justice MARSHALL in *Osborn v. Bank*, 9 Wheat., 738, 859:

"The foundation of the argument in favor of the right of a State to tax the bank, is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and private profit for its great end and principal object. * * * But the premises are not true. The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government is admitted; but the bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress would create such a corporation. The whole opinion of the court, in the case of *M'Culloch v. The State of Maryland*, 4 W., 316, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corpora-

tion, such as individuality, immortality, etc. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business."

The Court, however, demonstrated and held that the power of Congress extended over the faculties, trade and occupation of the bank, as well as its corporate existence; that the trade of the bank was essential to its character as a machine for the fiscal operations of the government, and, therefore, must be as exempt from State control as the actual conveyance of the public money.

"National banks," said the Court, in *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283, "are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States."

And in *Easton v. Iowa*, 188 U. S., 220, 229, it was said:

"Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain."

The conclusion announced was "upon principle and authority," that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations.

(d) The banks of the Federal Farm Loan System, like those of the National Banking System, are public corporations, "created for public and national purposes." Their creation is not authorized for their own sakes or for private purposes. Their incorporation, government

and operations are under strict federal control. They are called into existence to accomplish the great national purposes described in the title to the act, and to relieve the national banks of a character of fiscal operation which, though capable by law of discharge by such banks, can better be performed by banks especially organized for its conduct. The capital and resources of a bank of deposit and discount, from the nature of its business, must be kept fluid; the capital and resources of land banks—*Crédits Fonciers*—must be more static; the credits must be for longer periods than commercial credits can be; the security in its nature cannot be as realizable as ordinary banking collateral. In order that the commercial business of the country may be advantageously conducted, banking facilities must be provided which shall offer to commerce a flexible system of credits and avoid stringent monetary conditions. The merchant and the trader must be able to discount paper and secure advances for limited periods on fair collateral at moderate rates of interest. The national banks and the Federal Reserve System, operating under governmental control, not ownership, have provided these facilities.

In order that the agricultural business of the country may be advantageously conducted, banking facilities must be provided which shall afford the farmers the means of getting moneys for the improvement and development of their farms on the security of farm mortgages at reasonable rates of interest, repaying the loan upon an amortization plan which will enable the farmer to meet the obligation out of the enhanced profits of his industry distributed over a reasonable period of years. Private enterprise has failed to meet this need. Only the government can provide it. Its first attempt to do so through the National Banking System has been referred to. The difficulty of meeting the demands of commerce and those of agriculture through the same agency, led to the enact-

ment of the Farm Loan Act. Under this Act, the profits of the enterprise are more limited than under the National Bank Act; but in order to induce capital to be devoted to this use with such limited returns as are permitted, the farm mortgages taken and the bonds issued are exempted from taxation, and in the case of the Joint Stock Land Banks the capital stock is put on the same footing as regards State and local taxation, as the stock of National Banking Associations. Thus, the burden of furnishing the great sums required to the successful attainment of the end in view is distributed, instead of falling directly upon the taxpayers, as it would were Congress to apply funds raised by direct taxation to the same ends.

(c) Appellant assumes our argument to be that "as Congress can, in some respects, legislate concerning agriculture, it has the implied power to appropriate money therefor. From this, it has been suggested that the act might be sustained by treating it as an appropriation of money for the public welfare." This reasoning, he contends, is contrary to the principles settled in *Kansas v. Colorado*, 206 U. S., 46, where "it was decided that there could not, from the general welfare clause, or any other provision of the Constitution, be implied any power in Congress to reclaim arid land." (Ap. Brief., p. 45.)

Here, again, the appellant fails to grasp our real contention, which is that, having the *express* power to raise and appropriate moneys for the public welfare, which includes the great agricultural needs of the nation, Congress instead of directly appropriating to those purposes moneys raised by taxation or borrowing, may create any machinery which it deems appropriate to raise and apply moneys to those objects. In aid of that machinery, it authorizes the advance of moneys from the Treasury, in the purchase of bonds or stock of the

Federal Land Banks, and the protection from taxation of bonds of both classes of banks, which it makes instrumentalities of government in the accomplishment of the great public purpose of the Act.

Nothing to the contrary was established by *Kansas v. Colorado*.

That case involved no question of the constitutional exercise by Congress of its legislative power. The two States, parties to the suit, were concerned in a controversy respecting the right of Colorado to divert waters of the Arkansas River for the irrigation of lands within its territory, which Kansas claimed prevented the natural and customary flow of the river into and through its territory. The Attorney-General of the United States filed on behalf of the United States an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands owned by the United States. It was not averred that the diversion of the waters tended to diminish the navigability of the river, but it was asserted that there was a superior authority and supervisory control in the United States over the States, to regulate the flow and appropriation of the river. The argument was that, in view of the conflict of interest between two or more states, the Nation, as incident to its inherent sovereignty, had the implied power to intervene and control. The Court pointed out that there was involved no question of the power of the National Government over the navigability of a stream; that the Government distinctly asserted that the Arkansas River was not and never had been practically navigable, and nowhere claimed that any appropriation of the waters by Kansas or Colorado affected its navigability.

"It rests its petition of intervention," said Mr. Justice BREWER, "upon its alleged duty of legislating for the reclamation of arid lands; alleges that in or near the Arkansas River, as it runs through

Kansas and Colorado, are large tracts of those lands; that the National Government is itself the owner of many thousands of acres; that it has the right to make such legislative provision as in its judgment is needful for the reclamation of all these arid lands and for that purpose to appropriate the accessible waters. * * * In other words, the determination of the rights of the two States *inter sese* in regard to the flow of waters in the Arkansas River is subordinate to a superior right on the part of the National Government to control the whole system of the reclamation of arid lands. That involves the question whether the reclamation of arid lands is one of the powers granted to the General Government" (206 U. S., at pp. 86-87).

This question was answered in the negative. It was held that each State had full jurisdiction over the lands within its own borders, including the beds of streams and other waters, and the complaint of one State as to the effect of action by the other was held to present a justiciable controversy within the jurisdiction of the Supreme Court. The question there considered was totally different from the one at bar. Here, we are dealing with the exercise by Congress of its legislative power; there, the Executive branch of the Government sought to intervene as "steward of the public welfare," asserting an implied power in Congress which was nowhere expressed, and which this Court held was not properly to be implied from any express power. The fact that the United States owned a large amount of public land which was arid was one of the reasons alleged for the intervention, but the actual position taken was, that there was an implied power in the United States to govern the reclamation of arid lands because of the importance of that reclamation. The case did not involve in any aspect the question of the right of the Federal Government directly or indi-

rectly to appropriate money in aid of agriculture. The same question would be presented here, if the Government were claiming the power to legislate in regulation of the method of farming within the States, instead of merely creating machinery to raise and lend moneys to farmers on reasonable terms, to encourage them to develop and increase the agricultural productivity of the country, upon which the public welfare so greatly depends.

(f) Having provided for the creation of these land banks with the purpose above described primarily in view, Congress has also adapted them to other legitimate federal purposes.

In *Easton v. Iowa*, 188 U. S., 220, the Court (SHIRAS, J.), said (p. 238):

"Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Section 6 of the Farm Loan Act provides that:

"All Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safe-keeping and

prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds."

By Section 32, the Secretary of the Treasury is empowered, upon the request of the Farm Loan Board, to make deposits of public moneys for the temporary use of any Federal Land Bank, upon terms and conditions specified in the section.

Having in mind also, the vast demands upon the national treasury imposed by conditions resulting from the war, and the need of creating constantly widening markets for United States bonds, the title to the Farm Loan Act expressly states one of its purposes to be "to furnish a market for United States bonds." Provisions are found in Sections 5, 6, 13 (Eighth), 18 and 22 for investment in these bonds, as well as for the purchase by the Treasury Department of bonds issued by the banks of the Farm Loan System.

Banks of deposit are they as well, although limited in the class of depositors with whom they may deal (Sec. 14).

If any portion of the business which these land banks are authorized to conduct be within the power of Congress to authorize, the courts may not segregate those objects from other corporate authority conferred and, while upholding part, condemn the rest. All alike must be regarded as authorized.

Judge STORY (2 Com., Sec. 1269), in discussing the power of Congress to create a bank as an appropriate means of carrying into effect some of the enumerated powers of government, says:

"In regard to the faculties of the bank, if congress could constitutionally create it, they might

confer on it such faculties and powers as were fit to make it an appropriate means for fiscal operations. They had a right to adapt it in the best manner to its end. No one can pretend that its having the faculty of holding a capital; of lending and dealing in money; of issuing bank notes; of receiving deposits; and of appointing suitable officers to manage its affairs; are not highly useful and expedient and appropriate to the purposes of a bank. * * * No man can say that a single faculty in any national charter is useless, or irrelevant or strictly improper, that is conducive to its end as a national instrument. Deprive a bank of its trade and business, and its vital principles are destroyed. * * * All the powers given to the bank are to give efficacy to its functions of trade and business."

First National Bank v. Union Trust Co., 244 U. S., 416, involved the validity of provisions in the Federal Reserve Bank Act (38 Stats., 251, 262), which authorized national banks to act as trustee, executor, administrator or registrar of stocks and bonds.

Quoting from *Osborn v. Bank*, 9 Wheat., 738, WHITE, C. J., said:

"The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of opinion that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature' (p. 864)" (p. 420).

The Court said that the test of the existence of the power to grant the particular functions in question must be met by considering the Bank

"as created by Congress as an entity with all the functions and attributes conferred upon it" (p 424).

It was held that a determination could not be made as to a particular power upon a separation of the particular functions from the other attributes and functions of the bank. Referring to *McCulloch v. Maryland*, 4 Wheat., 316, and *Osborn v. The Bank*, 9 Wheat., 738, it was further said:

"What those cases established was that although a business was of a private nature and subject to state regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as part of its public authority. Manifestly this excluded the power of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise" (p. 425).

The Farm Loan Act has been accurately described as follows:

"The act creates an organization for pecuniary aid alone; that is, it is concerned only with the application of money. There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to

manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over lands within their borders."

Every principle upon which the constitutionality of the National Banking Act has been upheld applies with equal force to the Farm Loan Act.

III.

The provisions exempting from taxation, State or Federal, the mortgages executed to Federal Land Banks or Joint Stock Land Banks, and Farm Loan bonds issued by either class of banks under the provisions of the Farm Loan Act, and the income derived therefrom, are within the powers of Congress to enact.

Having the power to create these corporations and to provide through their instrumentality for the purposes mentioned, Congress may protect them by exempting their operations from taxation to the extent it deems necessary. This has been done by Section 26 of the act above quoted. This provision of the statute exempts Farm Loan Banks and National Farm Loan Associations, including their capital and reserve or surplus and the income derived therefrom, from all taxation, except upon their real estate; exempts first mortgages executed to Federal Land Banks and Joint Stock Land Banks, and farm loan bonds issued by either class of said banks and the income derived therefrom, from all taxation, federal and state, declaring such mortgages and bonds to be instrumentalities of the Government of the United States. Shares of stock in joint stock land banks are left subject

to taxation in like manner as the stock of national banks.

Granting the power of Congress to incorporate these institutions, the power to protect the property and the business and the instrumentalities of the banks from State taxation rests upon elementary principles. The power to tax is the power to destroy (*McCulloch v. Maryland*, 4 Wheat., 316, 431; *Loan Association v. Topeka*, 20 Wall., 655, 663; *Weston v. Charleston*, 2 Pet., 449). If the States were left free to tax mortgages taken by the Farm Loan Banks, and the bonds issued by them, private capital would not be attracted to these institutions. The margin of possible return would be much too small.

That a State may not by taxation or otherwise hamper the operation of an agency of the Federal Government has been settled since the decision in *McCulloch v. Maryland*, 4 Wheat., 316. See *Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516, 521. The power of the States to tax shares in National Banks depends upon the permission to do so granted by Congress. A tax upon farm mortgages taken, or Farm Loan bonds issued by Federal Land Banks or Joint Stock Land Banks, would be a tax on the operations of these banks and not only would hamper, but might wholly destroy their power to carry out the purposes of Congress. These securities are adopted by Congress as instrumentalities to accomplish the purpose of stimulating and developing the great agricultural resources of the Nation. Even in the absence of express exemption, it is doubtful if the States might tax their operations (*Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516). But Congress has removed all doubt by the clear enactment of exemption.

In *Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516, it was held that municipal corporations established in territories of the United States are

instrumentalities of the Federal Government and therefore the States may not tax bonds issued by them.

In *Fidelity and Deposit Co. v. Pennsylvania*, 240 U. S., 319, plaintiff, a Maryland surety company, claimed that in becoming a surety upon bonds required by the United States, it acted as a federal instrumentality and was not subject to State taxation on the premiums received. Congress had not attempted to exempt it from such taxation. While it was recognized that the tax was an exaction for the privilege of doing business, and it was conceded that "a State may not directly and materially hinder the exercise of Constitutional powers of the United States by demanding in opposition to the will of Congress that a Federal instrumentality pay a tax for the privilege of performing its functions," it was held that "mere contracts between private corporations and the United States do not necessarily render the former essential governmental agencies and confer freedom from state control" (p. 322). The Court also pointed out that Congress had not attempted to exempt such corporation from taxation.

On the other hand, in *Indian Territory Illuminating Oil Co. v. Oklahoma*, 240 U. S., 522, oil leases of lands in Oklahoma made by an Indian tribe under the authority of acts of Congress were held to be under the federal protection, and the lessee a federal instrumentality, and it was decided that the State could not tax the interest of the lessee in the leases directly, and could not tax the capital stock of the corporation owning them. A tax upon the lease was held to be a tax upon the power to make the lease. *Choctaw & Gulf R. R. v. Harrison*, 235 U. S., 292, was relied upon. There it was held that the agreement between the United States and certain Indian tribes ratified by Act of Congress (30 Stats., 495, 510), imposed

upon the United States a definite duty in respect to opening and operating the coal mines upon their lands. The appellant railroad company, in conformity with the provisions of the Act, had taken leases of certain of the mines, obligating itself to mine annually specified amounts of coal and to pay agreed royalties, and was therefore held to be the instrumentality through which the Government was carrying its obligations into effect. Such instrumentality, it was held, could not be subjected to an occupational or privilege tax by the State.

In *Farmers' National Bank v. Dearing*, 91 U. S., 29, it was held that national banks were not subject to State statutes regulating the amount of interest which might be charged by a bank doing business within the State upon loans made by it; that such banks were instruments designated to be used to aid the Government in the administration of an important branch of the public service; that they were a means appropriate to that end, and that of the degree of the necessity which existed for creating them, Congress was the sole judge. The Court, per SWAYNE, J., said:

"Being such means, brought into existence for this purpose and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will 'the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. . . . The power to create carries with it the power to preserve. The latter is a corollary from the former" (p. 34).

To the same effect, *Owensboro National Bank v. Owensboro*, 173 U. S., 664, WHITE, J., said (p. 668):

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."

See also *Easton v. Iowa*, 188 U. S., 220; *Bank of California v. Richardson*, 248 U. S., 476.

Mercantile Bank v. New York, 121 U. S., 138, involved a consideration of the application of a tax law of New York to national banks. Speaking of the National Banking Act, the Court said:

"The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the

authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investments in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy" (p. 154).

See also *Bank of California v. Richardson*, 248 U. S., 476.

The power of Congress to exempt the operations of the Land Banks as it has done is therefore amply sustained by authority. The statute carefully follows the precedents set in the case of National Banks.

IV.

There is no difference, so far as the constitutional exercise of congressional power to incorporate is concerned, between the Federal Land Banks and the Joint Stock Land Banks.

So deeply was Congress impressed with the necessity of without delay making provision for financing the agricultural needs of the country on a comprehensive scale, that it created two different species of agencies to accomplish its purpose, and authorized and directed the Treasury Department in the first instance to advance the capital necessary to the organization of one species, viz.: the Federal Land Banks, while leaving the other species, the Joint Stock Land Banks, wholly dependent for their capital on voluntary private subscription. The House Committee on Banking and Currency in reporting the bill [Report No. 630, *vide supra*] submitted the following observations concerning the

"Joint Stock Land Banks.

"The universal experience of foreign countries has demonstrated that profit-seeking organizations engaged in farm-mortgage business have firmly established themselves even where co-operative associations are strongest and most prosperous. These companies have developed and prospered side by side and in competition with the co-operative societies. It is manifest, therefore, that they render useful service to agriculture in those countries. As authorized in this bill, their capital is derived wholly from private subscription. They must begin business with a minimum paid-up capital of \$250,000. Their operations are confined to the territory of a single State. They can not engage in any other business than that of making farm-mortgage loans and is-

suing bonds. They can not issue bonds at a rate higher than 5 per cent. nor make a mortgage interest rate in excess of 1 per cent. above the bond rate. They are not limited as to the purposes for which the money loaned may be used.

"In practically every other particular they are subjected to the same restrictions and conditions as Federal farm land banks and are subject to the strictest Government supervision" [pp.9-10].

Appellant does not give the sources of his assertions concerning the efforts to market the farm loan bonds in 1917, and the reasons for the alleged failure to sell them to the public at that time. There is nothing of the kind in the record. The entry of America into the war in April, 1917, would, however, seem to furnish adequate reason for hesitation by the bond-investing public to buy these bonds. After the United States entered the war, by the Amendment of 1918, the Treasury Department was authorized during the years 1918 and 1919 to purchase bonds issued by the Federal Land Banks to an amount not exceeding \$100,000,000 in each year. Doubtless this legislation was needed to tide the farm loan system over the period when the government was selling billions of dollars in bonds to carry on the war. The Farm Loan bonds could hardly compete in the market during that period with government bonds, and the Treasury Department naturally would not desire them to do so. The bill of complaint, however, shows that the Treasury has purchased and now holds only 135 millions out of \$285,600,000 of bonds issued by the Federal Land Banks, or slightly less than one-half, and \$8,265,809 out of the \$8,892,130 aggregate par value of their capital stock.

Even in the face of that direct governmental appropriation in aid of the Federal Land Banks, the Joint Stock Land Banks have justified their creation; twenty-seven have been organized through individual effort, with

an aggregate capital of \$8,000,000, almost equal to that of the Federal Land Banks, and \$41,000,000 of their bonds have been sold to and now are held by the public.

Indeed the success of these Joint Stock Land Banks is the principal cause of the attack upon them. The private corporations which have been engaged in lending moneys on farm mortgages at rates ranging from 6 to 10 per cent. per annum [see Schedule annexed to brief of United States as *Amicus Curiae*] naturally have not regarded with satisfaction the creation and successful conduct of agencies which offer money at not exceeding 6 per cent. It does not require a stretch of imagination to perceive those influences back of the attack upon the Act in the courts, as well as the effort to procure from Congress a repeal of the exemption from taxation of the Farm Loan Bonds issued by Joint Stock Land Banks, referred to in Appellant's Brief. How well the system has worked in carrying out the intentions of Congress is shown in the last annual report of the Secretary of the Treasury for 1919, an extract from which is annexed to this brief (pp. 75-79, *infra*).

It appears in the Bill, that with the direct advance of government moneys to the amount of only \$143,265,809, there has been raised to be loaned out to farmers for agricultural development the sum of \$335,492,130; the difference, or \$192,226,321, having been contributed by the public through the purchase of bonds and stock.

The intent of the Act is that the stock of the Federal Land Banks, subscribed by the government, gradually shall be retired, as equal amounts are taken by individuals or National Farm Loan Associations.

Until that is accomplished, and all of their bonds held by the government are paid or purchased, the government retains control of the Board of Directors, and narrowly regulates the operations of the banks.

The regulatory provisions, from which the Joint Stock Land Banks are expressly exempted by Section 16, are those which were especially designed for the protection of the government's investment in the Federal Land Banks.

The Appellant misreads the Act when he contends that the Joint Stock Land Banks can loan to anyone on farm lands in unlimited amounts, and without any restrictions as to the use to be made of the land or of the money borrowed thereon. (Brief, pp. 12, 29, 37, 76.)

These banks are expressly made subject to the provisions of paragraph fifth of Section 12, viz.:

"Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged, and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act."

Such valuation is to be made by one of the Land Bank appraisers authorized by the Act.

Appellant also falls into error in stating that neither the Government, farm association, nor land bank has any connection with the Joint Stock Banks, nor any interest therein. (Brief, p. 29.) The fact is the Government has the most intimate connection. No Joint Stock Land Bank can be organized without the approval of the Farm Loan Board, and in all of its operations, it is subject to the close regulation of the Farm Loan Board. Section 17 enacts that the Federal Farm Loan Board shall have power

"(i) to exercise general supervisory authority over the federal land banks, the national farm loan associations, and the joint stock land banks herein provided for."

Nor is it true, as Appellant states, that

"the sole corporate purposes are to loan, in unlimited amounts, on farm mortgage security and issue and sell collateral trust farm loan bonds secured thereby. * * * In plain words, its sole business is to make farm loans without restrictions. * * * It is to have the same powers and to be subject to the restrictions and conditions imposed on land banks so far, but not otherwise, as same may be applicable, but practically every feature which led to or could justify the organization of land banks is declared to be inapplicable." (Brief, p. 29.)

As already pointed out, loans by Joint Stock Land Banks are, by Section 16, left expressly subject to the provisions of paragraphs 2nd, 3rd, 5th, 8th, 9th and 11th of Section 12, as well as to the restrictions expressed in Section 16. They can make no loans which are not secured by first mortgages on farm lands within the state in which the bank has its principal office, or within some one state contiguous to that state. No such loan shall exceed fifty per cent. (50%) of the appraised value of the land mortgaged and twenty per cent. (20%) of the value of the permanent insured improvements thereon, and no such mortgage can be used as collateral security to the issue of a farm loan bond by a Joint Stock Land Bank without the approval of the Farm Loan Board (Sec. 18). The only material particular in which the Joint Stock Land Banks have greater freedom of action than the Federal Land Banks is respecting the purposes to which the money loaned may be applied—a privilege which is qualified by the requirement in Section 12, paragraph 8, that

"every applicant for a loan under the terms of this act shall make application upon a form to be prescribed for that purpose by the Federal Farm

Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required,"

and by the power in the Federal Farm Loan Board to grant or refuse authority to make any specific issue of farm loan bonds based upon any given collateral.

The differences between the powers, liabilities and functions of the two classes of banks are not of such a nature as to bring one within and to leave the other outside of the permissible exercise of congressional power.

It is true that the act authorizes and requires the United States to subscribe in the first instance to so much of the capital stock of the Federal Land Banks as may not be subscribed by individuals, corporations, State governments, or National Farm Loan Associations, within the time limited for subscriptions by the Farm Loan Board; but this subscription is only in the nature of an advance, and whenever subscriptions to the stock of any Federal Land Bank by National Farm Loan Associations shall amount to \$750,000, the bank is required to apply 25 per cent. of all sums subsequently subscribed to the retirement of the original stock (Sec. 5). The Act contemplates that the associations of borrowers on farm mortgage security, known as National Farm Loan Associations, by their subscriptions to the stock of Federal Land Banks, required as conditions to procuring mortgage loans, shall become the stockholders of such banks. While no personal liability for the debts of the Federal Land Banks is imposed upon their stockholders, shareholders of the National Farm Loan Associations are made individually responsible, equally and ratably, for all contracts, debts and engagements of such Associations, to the extent of the amount of the stock owned by

them, at the par value thereof, in addition to the amount paid in and represented by their shares. This double liability, therefore, is an additional security to the Federal Land Banks for the repayment of moneys loaned on farm loan mortgages through Farm Loan Associations, and thus furnishes an additional security for the payment of the bonds issued against such mortgages as collateral. For that reason, probably, no double liability is imposed upon the stockholders of Federal Land Banks. On the other hand, the Joint Stock Land Banks lend directly to farmers on mortgages of their lands, which mortgages are then used as collateral for bonds issued by the Joint Stock Land Banks, and the added security for their repayment is furnished by imposing upon the stockholders in these banks a double liability for their debts similar to that of stockholders in national banks.

If, as we contend, Congress, having undoubted power to appropriate money raised by taxation or by borrowing on the credit of the United States, for the purpose of stimulating agriculture, by loaning it to farmers on the security of farm loan mortgages, also has the power to accomplish the same purpose by creating corporations authorized to lend money on the same character of security and to issue and sell to the public bonds secured by farm mortgages, Congress must be the sole judge of the nature of the corporate organization, and of the extent and character of the aid the government shall give to enable such corporations successfully to accomplish the purpose of their creation.

Therefore, it is immaterial whether or not the Treasury Department is empowered temporarily or permanently to subscribe to the stock of the Federal Land Banks, and not to that of the Joint Stock Land Banks, or to purchase Farm Loan bonds issued by the former, but not those issued by the latter. If the end sought to be attained, namely, the stimulation and encouragement of

the Nation's agriculture, be legitimate, and within the scope of the general welfare for which by the Constitution Congress is expressly empowered to levy taxes and appropriate moneys; if the Federal Farm Loan System embodied in the Act is appropriate, and plainly adapted to secure the application of moneys to that great end, then, the circumstance of governmental stock or bond holding in one case and not in the other, can have no bearing on the question of Congressional power. The validity of the legislation as to each class of banks, rests upon the fact that it is machinery adopted to accomplish the same end which Congress might attain by direct taxation and appropriation through ordinary governmental agencies.

V.

Whether or not the Land Banks of either class are properly designated as "banks," they are corporations which Congress had power to create to carry out a constitutional purpose.

Appellant, in his argument, first assumes what is not a fact, namely, that the main purpose of the agencies created by the act is not to perform any governmental function as distinguished from one which is strictly private (Ap. Brief, p. 9), and upon that erroneous assumption he bases his argument that Congress could not constitutionally create either class of banks. The title of the Farm Loan Act accurately describes the purpose of its enactment. Provision is made therein to secure to farmers capital for agricultural development by means of loans on farm mortgages at reasonable rates of interest and easy terms of repayment. A standard form of investment based upon farm mortgages is

created in the Farm Loan Bonds; rates of interest upon farm loans are equalized by the provision in Section 12, paragraph third:

"No loan on mortgage shall be made under this Act at a rate of interest exceeding six per cent. per annum, exclusive of amortization payments."

A market for United States bonds is created by the permissive provisions in Section 13, paragraph 8, and in Section 22, and by the requirement of investment in Section 5, last paragraph. The bill of complaint shows that the Federal Land Banks hold \$4,230,805, and the Joint Stock Land Banks \$3,287,503, in United States bonds (Rec., p. 9).

The authority to create government depositaries and financial agents for the United States already has been exercised to the extent described in the bill (Rec., pp. 8, 10).

Appellant wholly misconceives our position when he says:

"By assuming the scheme as one to do a *general* banking business, which each of such agencies is expressly prohibited (Sec. 13) from doing, it is sought to justify its adoption as an exercise of an implied *governmental* power."

No such argument was made on our part in the District Court, and none is made here. Nor is it true, as argued by Appellant, that "the main, chief and only substantial purpose is to use the system for the *private* or *proprietary* interests of borrowers and lenders" (Brief, p. 42).

Our position is that the great central purpose of the Act is the encouragement of agriculture in the United States by providing farmers with moneys necessary for its development upon the security of their farms, on rea-

sonable terms as to interest and repayment. That, having the power to accomplish that object by direct appropriation, Congress may adopt any other machinery which it deems appropriate to that end, and that for that purpose it has created two different species of corporations, investing them with adequate powers, aiding one class by direct stock subscription and by bond purchases, and both classes by protection against taxation; conferring upon both of them other powers necessary or convenient to the successful prosecution of their business, powers which in themselves, probably, might justify their incorporation. It is wholly immaterial whether or not these corporations be called "banks." They are corporations created by Congress to carry out a great public purpose. They have certain powers usually associated with banking institutions. They furnish credit to farmers in like manner as banks of deposit and discount furnish credit to persons engaged in commerce and industry. But no argument in favor of the power of Congress to create them is based upon the fact that they are called banks.

VI.

Congress might constitutionally have created both classes of banks to serve as depositaries of public moneys and financial agents of the government. That it chose also to empower them to loan moneys on farm mortgages, even if that were not within its power to grant, would not impair the legality of the incorporation, nor its jurisdiction to protect them against National or State taxation.

By Section 6 of the Act, the Secretary of the Treasury is authorized to designate both the Federal Land Banks and the Joint Stock Land Banks as depositaries of public moneys, and to employ any of them as financial agents of the government. It is of no consequence that this power has been so little exercised up to the present time. The entry of the United States into the war the year following the enactment of the Farm Loan Act, is a sufficient explanation for failure to put all of the provisions of the Act into effect. It is shown by the bill that the Treasury Department, under the authority of the amending act of 1918, did make deposits of substantial amounts in eight different Federal Land Banks, and it also appears in the bill (Rec., p. 10) that during the summer of 1918, three of the Federal Land Banks were designated as financial agents of the government for the making of seed grain loans to farmers in drought-stricken sections. It is not necessary that a financial agent of the government should be a bank of discount and deposit. What is required is, first, that such agent be an organization which may receive deposits where, for example, the money collected by the Internal Revenue authorities of the government may be deposited, such banks giving

security for the safekeeping of the deposits in like manner as national banks do; secondly, that it have an organization appropriate to the receipt and disbursement of government moneys. The Treasury Department is constantly paying out money in every State of the United States. It is disbursing public funds in carrying out the ordinary transactions of the government. For this purpose, it avails of many different agencies, and these Land Banks may, in given instances, be peculiarly adaptable to service of that character; as was the case when, in the summer of 1918, the government set aside \$5,000,000 to loan in small amounts to farmers to enable them to buy seed grain. The bill of complaint shows that the three Land Banks designated made upwards of 15,000 loans of that character, aggregating in all more than \$4,500,000 (Bill, p. 10). Such financial agencies also may be called upon from time to time by the Secretary of the Treasury to sell the temporary certificates of indebtedness of the government; that is, to go out and find purchasers for these temporary certificates, which are issued by the Treasury for the purpose of facilitating the operations of the United States Treasury between the times when taxes are being received. The United States Treasury often needs money at times when taxes are not due. Instead of borrowing it from banks, it issues temporary certificates of indebtedness bearing interest at four or five per cent., and calls upon banks of all kinds to assist in marketing such certificates. Some banks take them as investments, employing a portion of their deposits or of their capital for that purpose. Others sell to investors, who buy them. The farmers are investors. In many cases they might be reached through the Land Banks better than through the national banks, and it is thus readily apparent that this agency would be useful in circumstances of that character. These banks

also may be employed by the Secretary of the Treasury as financial agents for the purpose of selling War Savings Stamps and Thrift Stamps. It has been the experience of the Treasury Department that too many agencies for that purpose cannot be found in the country. They also may be employed in selling the bonds of the government, as was the case with the various Liberty Loans. It is of the utmost importance that every possible purchaser may be reached, and organizations of this description, dealing with farmers, may reach sources of investment which otherwise would not be attained. Congress obviously had in view these possibilities when it enacted in Section 6 the provision authorizing the Secretary of the Treasury to designate these two classes of corporations, to serve as depositories of public money and as financial agents of the government. As time goes on and more banks are organized, they will become increasingly useful in assisting the Federal Government in the performance of its fiscal operations. If there were no other purpose than this for the creation of these corporations, could the Court say that Congress had exceeded its jurisdiction in permitting their formation?

Appellant has sought in his brief to question the motives of Congress in enacting the Farm Loan Act (Brief, pp. 7, 8, 13). On the one hand, he calls the title to the act misleading, and in another place, he appeals to the title as showing that it is not an appropriation act—which nobody has ever claimed that it was. What the appellees contend is, that Congress had full power to provide by appropriation for the accomplishment of the purpose which it has created the machinery of this act to accomplish in a different way. That the courts will not attempt to restrain the exercise of a lawful power by Congress on the assumption that a wrongful motive or pur-

pose has caused the power to be exercised, has been long settled. (*McCray v. United States*, 195 U. S., 27, 53-59; *Red "C" Oil Co. v. North Carolina*, 222 U. S., 380.)

In *Florida Central & Peninsular R. R. Co. v. Reynolds*, 183 U. S., 471, the Court said (p. 480):

"We must assume the legislature acts for the best interests of the State. A wrong intent cannot be imputed."

In *Ellis v. United States*, 206 U. S., 246, HOLMES, J., delivering the opinion of the Court, said:

"It is true that it [Congress] has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed cannot be limited by a speculation as to motives" (p. 256).

VII.

This appeal challenges the validity of an Act of Congress which was framed after extensive enquiry, unusual study and full debate, for the purpose of adequately providing for a great public need. As Chief Justice MARSHALL said of the Act incorporating the Second United States Bank, this Act "did not steal upon an unsuspecting legislature and pass unobserved" (*M'Culloch v. Maryland*, 4 Wheat., 316, 402).

Millions of dollars have been invested by the public in reliance upon its provisions and upon the faith of the exemption from taxation held out by Congress as an inducement to investors. Seldom has a controversy been presented to this Court which threatens such far-reaching financial loss as would follow if the contention of the

Appellant were upheld. In such circumstance, it is submitted that the entire absence of Constitutional power in Congress must be clearly demonstrated before the Court would declare worthless the millions of securities sold on the faith and credit of an Act of Congress so deliberately and so carefully enacted. We most earnestly submit that not only has this want of power not been established, but that the contrary is clearly demonstrated, and therefore that the decree appealed from which dismissed the bill should be affirmed.

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W. G. McADOO,

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Land Bank of Chicago, Inter-
venor-Appellee.*

APPENDIX.

Extract from Annual Report of the Secretary of the Treasury (Hon. Carter Glass) for the year 1919, dated November 20th, 1919:

"The Federal farm-loan system has operated effectively and successfully during the past year, amply justifying the great purpose for which it was created and meeting the expectations of its advocates. The Federal land banks have continued to make loans to farmers at $5\frac{1}{2}$ per cent. per annum, and the joint stock land banks at 6 per cent. All loans, as provided by the act, have been made on the amortization plan, the borrower making a fixed payment, annually or semi-annually, which is at least 1 per cent. in excess of the interest charge, such excess being applied on the principal. As the balance of the principal due decreases the proportion of this level payment absorbed by the interest charge correspondingly decreases and a constantly increasing balance is applicable to the extinguishment of the debt. This principle, while familiar to actuaries and statisticians, had not been applied in this country to individual mortgages to any appreciable extent prior to the enactment of the Federal farm-loan act in July, 1916. The great success of the farm-loan system has called attention to the advantages of this method of paying debts, and the application of the amortization plan to all mortgages, urban and rural, is now being actively urged by influential private organizations.

"During the 12 months ended September 30, 1919, loans were made by the Federal land banks to the farmers of the United States to the aggregate amount of \$129,271,662, an increase of \$10,742,839 over the corresponding period a year ago, and making a total of loans by the Federal land banks from the inception of the system in March, 1917, of \$261,175,346. The subjoined table indi-

cates the amount of the loans made by each of the banks in the years referred to and in the aggregate:

Dis- trict.	Federal land bank.	Loans made Oct. 1, 1917, to Sept. 30, 1918.	Loans made Oct. 1, 1918, to Sept. 30, 1919.	Aggregate of loans made from date of organization in March, 1917, to Sept. 30, 1919.
1. Springfield, Mass..		\$4,999,630	\$4,738,200	\$9,913,545
2. Baltimore, Md....		4,323,150	5,277,550	10,401,600
3. Columbia, S. C....		6,198,905	7,361,250	13,891,045
4. Louisville, Ky.....		7,490,700	9,450,700	17,959,900
5. New Orleans, La..		8,800,135	9,722,715	18,192,505
6. St. Louis, Mo.....		8,166,065	12,149,270	20,895,940
7. St. Paul, Minn....		17,380,500	14,886,100	33,605,900
8. Omaha, Nebr.....		14,418,050	20,267,450	35,390,290
9. Wichita, Kans....		10,292,922	9,045,000	23,311,800
10. Houston, Tex.....		11,264,287	16,885,787	28,666,561
11. Berkeley, Calif....		7,315,800	6,019,400	14,065,400
12. Spokane, Wash....		17,878,679	14,458,340	34,880,860
Total.....		118,528,823	129,271,662	261,175,346

"There have been 27 joint stock land banks incorporated by private capital under the terms of the act, with aggregate capital of \$8,500,000. Nineteen of these banks were incorporated during the past year, and therefore can not be said to be, as yet, in full and active operation. The loans made by the joint stock land banks aggregate \$41,787,359, which added to the loans of the Federal land banks makes a total of \$302,963,705 lent to farmers by all of the banks composing the system. The banks of this character have grown very strikingly in number and in volume of business during the past year. Owing to the fact that they were not established until after the Federal land banks, and that for some time there were only a few in operation, their loans represent only 14 per cent. of the total, but during one or more recent months they have transacted as high as 30 per cent. of the whole volume of business of the system. Notwithstanding this division of the field, the Federal land banks have done a larger volume of more desirable business than in the previous year, the membership of existing farm-loan associations has grown,

and over 600 new associations have been organized.

"A very gratifying feature of the year is the remarkable improvement in the financial position of the Federal land banks. During the first year of their existence, and part of the second year, they necessarily operated at a loss. This was inevitable, and was anticipated by the proponents of the system and those who were familiar with the business. The 12 banks opened in the spring of 1917 with an aggregate capital of \$9,000,000, of which \$8,892,130 was subscribed by the Government and \$107,870 by individuals. Before the close of the first year over \$600,000 of this original capital had been absorbed by the excess of organization and current expenses over the scanty receipts of that period. By January 31, 1919, this amount had been made good out of earnings. Under the provision of the Federal farm-loan act that after subscriptions to capital stock by farm-loan associations shall amount to \$750,000 in any Federal land bank, one-fourth of all sums thereafter subscribed shall be applied to the payment and retirement of the stock originally subscribed, eight of the banks had, up to November 15, 1919, paid and retired \$1,198,890 of the stock originally subscribed by the Government, thereby reducing the amount of stock held by the Government on that date to \$7,693,240. Notwithstanding such retirement of stock originally subscribed, the aggregate capital stock of the 12 banks increased from \$9,000,000 at the start to \$21,321,687 on November 15, 1919.

"Up to October 31, 1919, the net earnings of the 12 banks amounted to \$1,278,394.41, of which \$202,175 had been carried to reserve account, \$332,923.98 distributed in dividends paid by five banks upon stock owned by farm-loan associations and individuals, and \$743,295.43 is still carried as undivided profits.

"Another gratifying feature, testifying alike to the security of the loans made, the ability and willingness of the borrowers to make payment, and

the efficiency of the collection machinery of the banks, is the unusually small total of delinquencies. To September 30, 1919, payments due by borrowers to the banks had accrued to the amount of \$12,666,313.61. Of this sum, the amount remaining unpaid on that date was only \$172,456.72, or 1.4 per cent. of the total. Of that amount \$86,816.60 was 30 days or less overdue, \$25,182.05 from 30 to 60 days, \$14,872.85 from 60 to 90 days, and only \$45,585.22 over 90 days overdue. This record has been made notwithstanding widespread disaster to crops in several sections of the country.

"The Federal farm-loan act provides that 'the salaries and expenses of the Federal farm-loan board and the farm loan registrars and examiners * * * shall be paid by the United States.' The system is now so well established and is in such financial condition that this assistance from the Government, in the judgment of the Federal farm loan board, concurred in by officers of the banks, is no longer necessary or desirable. The board accordingly has recommended that beginning with the fiscal year 1921 its expenses be provided for by assessments against the Federal land banks and the joint stock land banks in proportion to their gross assets. Measures for this purpose have been introduced in both houses of the Congress and, should the plan be adopted, the Government will be relieved entirely from the payment of the expenses involved. To have put the system on such a basis in three years is a very gratifying and satisfactory result.

"The primary purpose of the Federal farm-loan system, as expressed in the title of the act creating it, was 'to provide capital for agricultural development.' The accomplishment of that purpose necessarily involved the possibility of an enhancement of farm-land values. In so far as such enhancement was based upon increased production or added attraction to farm life, it was legitimate and desirable. Indeed, there were many sections of the country where, owing either to the exodus of young

men from the farms to industrial pursuits in the towns, or to local and peculiar conditions, farm lands were selling at prices much below their intrinsic value as measured by productive capacity. Any enhancement in land values in these sections which might incidentally result from the operation of the Federal farm-loan system was a general public benefit, as tending to check the urban drift of population and stimulate the local production of foodstuffs. The Federal Farm Loan Board has had in view from the start, however, the importance of guarding the system from complicity in anything approaching speculation in farm lands or such enhancement in their values as would either make them more difficult for men of small means to acquire or add to the overhead cost of producing foodstuffs. The high prices realized by growers for their crops during the war period were naturally reflected in a general increase in land values, but the first indication of any rapid or speculative rise did not manifest itself until a few months ago, when it appeared in some sections of the Middle West. It was claimed, perhaps correctly, in a recent convention of private loaning agencies, that the advances in this section were justified and will be permanent. The Federal Farm Loan Board, however, has thought that in the public interest, and in pursuance of the policy of conservatism which they have always followed, it would be better to follow this movement at a safe distance than to be part of it. They, therefore, issued instructions under date of May 3, 1919, to the banks under their supervision that where sales had taken place within a year at prices materially in excess of previous values such sales were not to be taken into account in the appraisal of the land, and under date of July 7, 1919, that no loans in excess of \$100 an acre were to be made on land used for general agricultural purposes, even where the appraisal was \$300 or \$400 an acre."

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JAMES D. WALKER

IN THE
Supreme Court of the United States,
OCTOBER TERM, A. D. 1919.

CHARLES E. SMITH,

Appellant,

against

KANSAS CITY TITLE & TRUST COMPANY, FEDERAL
LAND BANK OF WICHITA, KANSAS, and FIRST JOINT
STOCK LAND BANK OF CHICAGO, ILLINOIS,

Appellees.

Appeal From the District Court of the United States for
the Western Division of the Western
District of Missouri.

BRIEF AND ARGUMENT FOR APPELLEE, FED-
ERAL LAND BANK OF WICHITA, KANSAS.

CHARLES E. HUGHES,

Counsel for Appellee,

FEDERAL LAND BANK OF WICHITA, KANSAS.

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IN THE
SUPREME COURT OF THE UNITED
STATES.

OCTOBER TERM, 1919.

No. 593.

CHARLES E. SMITH,
Appellant,

against

KANSAS CITY TITLE & TRUST COM-
PANY, FEDERAL LAND BANK OF
WICHITA, KANSAS, and FIRST
JOINT STOCK LAND BANK OF
CHICAGO, ILLINOIS,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI.

**BRIEF FOR APPELLEE, FEDERAL LAND
BANK OF WICHITA, KANSAS.**

Statement.

This is an appeal from a decree of the District
Court dismissing the bill.

The suit was brought by the appellant as a stockholder of the defendant, Kansas City Title & Trust Company, to restrain that Company from investing its funds in Farm Loan Bonds issued by any Federal Land Bank or by any Joint Stock Land Bank; and to obtain a decree that the Federal Farm Loan Act of July 17, 1916 (39 Stat. 360) is unconstitutional and void, that the Farm Loan Bonds issued thereunder are unauthorized and illegal, and in particular that the tax exemption feature of the Act is invalid (Transcript of Record, p. 17).

The Federal Land Bank of Wichita, Kansas, on behalf of itself and of the other Federal Land Banks, and the First Joint Stock Land Bank of Chicago, Illinois, on behalf of itself and of the other Joint Stock Land Banks, were permitted on separate applications to intervene and were made parties defendant (*id.* pp. 19, 20, 34). These intervenors joined with the original defendant in a motion to dismiss the bill and the motion after argument was granted (*id.* p. 31).

This brief is presented on behalf of the Federal Land Banks.

Analysis of the Federal Farm Loan Act.

The provisions of the Federal Farm Loan Act of July 17, 1916, c. 245 (39 Stat. 360) as amended by the Act of January 18, 1918, c. 9 (40 Stat. 431), so far as they relate to the Federal Land Banks and are pertinent to the questions here involved may be succinctly described as follows:

The Federal Farm Loan Board.

The Federal Land Banks are Federal corporations organized by the Federal Farm Loan Board (sec. 4). This Board consists of five members, including the Secretary of the Treasury and four members appointed by the President by and with the advice and consent of the Senate, one of whom is designated by the President as the Farm Loan Commissioner and is the active executive officer of the Board. It has general supervision of the Federal Farm Loan Bureau, which is established in the Treasury Department (sec. 3).

Organization of Federal Land Banks.

It was made the duty of the Federal Farm Loan Board to divide continental United States, excluding Alaska, into twelve districts and to establish a Federal Land Bank in each district. The mode of organization was prescribed as follows: The Federal Farm Loan Board was to appoint five directors, for the purpose of temporary management. These directors were to make an "organization certificate," on the filing of which the Federal Land Bank was to become a body corporate (sec. 4). Each Federal Land Bank must have, before beginning business, a subscribed capital of not less than \$750,000. The capital stock was to be divided into shares of \$5 each and might be subscribed for and held by any individual, firm or corporation or by the Government of any State or of the United States. If within thirty days after the subscription books were opened any part of the minimum capital of \$750,000 remained unsubscribed, the Secretary of the Treasury was

required to subscribe the remainder on behalf of the United States, and to pay for the shares out of any moneys in the Treasury not otherwise appropriated. Thereafter, stock was to be issued in connection with mortgage loans. Stock owned by the United States is not to receive dividends, but all other stock is to share in dividend distributions without preference. Each National Farm Loan Association and the Government of the United States are entitled to one vote for each share of stock and no other shareholder can vote (sec. 5).

National Farm Loan Associations.

National Farm Loan Associations are also Federal corporations which may be organized by persons desiring to borrow money on farm mortgage security. If the Federal Land Bank so recommends, the Federal Farm Loan Board may grant a charter to the applicants designating the territory in which such Association may make loans (sec. 7). Shares in these Associations are to be of the par value of \$5 each, and no persons but borrowers on farm land mortgages are to be shareholders; such borrowers are to take stock to the amount of five percent of their loans (sec. 8). On this stock, there is double liability (sec. 9). Whenever any Association desires to secure for a member a loan on first mortgage from the Federal Land Bank of its district, it must subscribe for capital stock of that Land Bank to the amount of five percent of the loan. This stock must be paid off and retired upon full payment of the mortgage loan, and whenever it is retired the Association is to retire the corresponding shares of its stock (sec. 7). Among the described powers of National Farm Loan Associations may be noted the power

"to indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district"; and also the power "to issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of \$25 or any multiple thereof." Such deposits, when received, are to be forthwith transmitted to such Land Bank and be invested by it in the purchase of farm loan bonds issued by a Federal Land Bank or in first mortgages as defined by the Act (sec. 11).

Permanent Organization of Federal Land Banks.

After subscriptions to stock in any Federal Land Bank by National Farm Loan Associations reach the sum of \$100,000, the permanent officers and directors of the Land Bank are to take over its management from the temporary officers and directors first designated. The Board of Directors thus constituted is to consist of nine members, six of whom are to be chosen by National Farm Loan Associations, and the remaining three directors are to be appointed by the Federal Farm Loan Board (sec. 4). After subscriptions to the capital stock of any Land Bank by National Farm Loan Associations amount to \$750,000, the bank must apply semi-annually to the payment and retirement of the shares which were issued upon subscriptions to the original capital twenty-five percent of all sums thereafter subscribed to capital stock until the original capital stock is retired at par. At least twenty-five percent of that part

of the capital of any Federal Land Bank of which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets and may consist of cash in the vaults of the Land Bank, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under rules of the Federal Farm Loan Board, provided that not less than five percent of such capital shall be invested in United States Government bonds (sec. 5).

Amendment of Act providing for continuance of temporary organization of Federal Land Banks.

By the amendment of January 18, 1918 (40 Stat. 431), the Secretary of the Treasury was authorized in his discretion, upon the request of the Federal Farm Loan Board from time to time during the fiscal years ending June 30, 1918, and June 30, 1919, respectively, to use any funds in the Treasury not otherwise appropriated in the purchase at par and accrued interest from any Federal Land Bank of Farm Loan Bonds issued by such bank. Such purchases were not to exceed \$100,000,000 in either of the fiscal years specified.

It was then provided that the temporary organization of any Federal Land Bank as provided in section 4 of the Federal Farm Loan Act should be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment should be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations should equal the amount of stock held in such bank by the Government of the United States.

Restriction upon mortgage loans made by Federal Land Banks.

The mortgage loans by the Federal Land Banks are carefully restricted so as to be made only to actual cultivators of the soil and thus to promote agricultural development in a systematic manner throughout the country. They can be made only for the purpose of purchasing farm lands and equipment, and for improvements, or for liquidating existing indebtedness as stated. They are to be made to cultivators of the land mortgaged in an amount not above \$10,000 and at a rate of interest not exceeding six percent per annum. The interest rate is to be the rate in the last series of farm loan bonds issued by the Land Bank making the loan with not more than one per cent added to cover administration expenses and profits (sec. 12).

General powers of Federal Land Banks.

Each Federal Land Bank is empowered to issue, subject to the approval of the Federal Farm Loan Board, and to buy and sell farm loan bonds authorized in the Act; to invest its funds in the purchase of qualified first mortgages on farm lands within its district; to hypothecate mortgages with the Farm Loan Registrar of the district (an officer appointed by the Federal Farm Loan Board) as security for farm loan bonds; to acquire and dispose of property necessary or convenient for the transaction of its business, and parcels of land acquired in satisfaction of debts or at judicial sales; to deposit its securities and its current funds subject to check with any member bank of the Federal Reserve System and to receive inter-

est thereon; to accept deposits of securities or of current funds from national Farm Loan Associations holding its shares but to pay no interest on such deposits; to borrow money, to give security therefor, and to pay interest thereon; to buy and sell United States bonds; and to charge applicants for loans, under regulations of the Federal Farm Loan Board, reasonable fees not exceeding actual cost of appraisal and determination of title (sec. 13). The Act provides that no Federal Land Bank shall have power "to accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized" by the Act; to loan on first mortgage except through National Farm Loan Associations or through described agents employed in localities where Associations have not been formed; to accept any mortgages on real estate except first mortgages made as provided in the Act and those taken as additional security for existing loans; to issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any National Farm Loan Association additional mortgages when the unpaid principal upon existing mortgages received therefrom exceeds twenty times the amount of its capital stock owned by such Association; or to demand or receive any commission or charge not specifically authorized in the Act (sec. 14). The by-laws of Federal Land Banks, regulating the conduct of business, are subject to the supervision of the Federal Farm Loan Board (sec. 4).

Every Federal Land Bank must carry semi-annually to reserve twenty-five percent of its net earnings until the reserve account shall show a

credit balance equal to twenty percent of the outstanding capital stock of the bank, and thereafter is to carry to reserve account five percent of its net earnings annually. The reserves of Federal Land Banks are to be invested in accordance with the rules prescribed by the Federal Farm Loan Board (sec. 23). Upon default of any obligation, Federal Land Banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board for the purpose of liquidation. This Board may also appoint a Receiver of any National Farm Loan Association where such Association shall have been in default for a period of two years or its total amount of defaults, as specified, shall amount to at least \$150,000 in the Federal Land Bank district. The Receiver may take possession of the assets of such Associations or of Federal Land Banks and may in the course of liquidation sell all their real and personal property on such terms as the Federal Farm Loan Board or a court of competent jurisdiction may direct. No National Farm Loan Association or Federal Land Bank may go into voluntary liquidation without the consent of the Board (sec. 29).

Farm Loan Bonds.

Farm loan bonds may be issued by any Federal Land Bank with the approval of the Federal Farm Loan Board (sec. 18), in denominations of \$25, \$50, \$100, \$500, and \$1000, and are to run for specified minimum and maximum periods subject to payment and retirement at the option of the Land Bank at any time after five years from date of issue. Interest coupons are to be payable semi-annually and bonds are to be issued in series of not less than \$50,000, the amount and terms to be

fixed by the Federal Farm Loan Board, and at a rate of interest not to exceed five percent per annum. The Secretary of the Treasury is authorized to prepare suitable bonds in such form, subject to the provisions of the Act, as the Federal Farm Loan Board may approve. The expenses of the preparation, custody and delivery of the bonds are to be paid by the Secretary of the Treasury out of any moneys not otherwise appropriated, and reimbursement is to be effected through proportionate assessments on farm land banks. The bonds may be exchanged into registered bonds of any amount and re-exchanged into coupon bonds at the option of the holder under rules prescribed by the Board (sec. 20).

On application by any Federal Land Bank to the Federal Farm Loan Board for approval of an issue of bonds, the Federal Land Bank must tender to the Farm Loan Registrar of the district as collateral security first mortgages on farm lands qualified under the Act, or United States Government bonds, not less in aggregate than the amount of the proposed issue. The Federal Farm Loan Board, upon investigation and appraisalment, may grant or reject the application in whole or in part (sec. 18).

Every Federal Land Bank issuing such bonds is to be primarily liable therefor, and is also to be liable, upon presentation of coupons, for interest payments due upon any farm loan bonds issued by other Federal Land Banks and remaining unpaid in consequence of their default; and every such bank is likewise to be liable for such portion of the principal of farm loan bonds issued by other Federal Land Banks as shall not be paid after their assets shall have been liquidated and distributed, provided that such losses either of interest or of

principal shall be assessed by the Federal Farm Loan Board against solvent Land Banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding (sec. 21).

Every farm loan bond issued by a Federal Land Bank must contain on its face "a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or endorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal Land Banks are liable for the payment of each bond" (sec. 21). It is provided that farm loan bonds shall be "a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits." They may be bought and sold by any member bank of the Federal Reserve System, and any Federal Reserve Bank may buy and sell farm loan bonds to the same extent and on the same limitations as are provided in the case of State, county, district and municipal bonds (sec. 27).

The Act provides for the amortization of loans, and all amortization or other payments on the principal of mortgages securing farm loan bonds are to constitute a trust fund in the hands of the Federal Land Bank to be applied (a) to pay off farm loan bonds issued by said bank as they mature; (b) to purchase at or below par farm loan bonds issued by said bank or by any other Federal Land Bank; (c) to loan on qualified first mort-

gages on farm lands within the bank district, and (d) to purchase United States Government bonds (sec. 22).

Federal Land Banks as depositaries and fiscal agents of the Government.

All Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, are to be depositaries of public money, except receipts from customs, under regulations prescribed by the Secretary. They may also be employed as financial agents of the Government; and they must perform all such reasonable duties in these capacities as may be required of them. The Secretary of the Treasury must require from the banks thus designated satisfactory security by the deposit of United States bonds or otherwise for the faithful performance of their duties. No Government funds deposited with the banks under this provision are to be invested in mortgage loans or farm loan bonds (sec. 6).

The Secretary of the Treasury is also authorized in his discretion upon the request of the Federal Farm Loan Board to make deposits for the temporary use of any Federal Land Bank out of any money in the Treasury not otherwise appropriated. The Federal Land Bank must issue therefor a certificate of indebtedness at a rate of interest not to exceed the current rate charged for other Government deposits to be secured by farm loan bonds or other collateral to the satisfaction of the Secretary of the Treasury. Any such certificate is to be redeemed and paid by the Land Bank at the discretion of the Secretary of the Treasury, and the aggregate of all sums so deposited is not to exceed \$6,000,000 at any one time (sec. 32).

Exemption from Taxation.

The Act further provides that every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said Bank or Association under the provisions of the Act.

Farm Loan Bonds issued under the Act, as well as first mortgages executed to Federal Land Banks, are to "be deemed and held to be instrumentalities of the Government of the United States," and as such they and the income derived therefrom are to be exempt from Federal, State, municipal and local taxation. Real estate of such Banks or Associations is to remain subject to State, county or municipal taxes to the same extent, according to its value, as other real property is taxed (sec. 26).

The provisions of the Act relating to Joint Stock Land Banks are omitted, as these provisions will be presented by counsel for those banks.

The Organization of Federal Land Banks under the Act, the issue of Farm Loan Bonds and Activities of These Banks on behalf of the Government.

The bill as amended sets forth the facts. The continental United States excluding Alaska was divided, as provided in the Act, into twelve Federal Land Bank Districts, in each of which a Federal Land Bank has been established by the Federal Farm Loan Board (Transcript of Record,

p. 3). Under the provisions of Section 5 of the Act, the Secretary of the Treasury invested in the capital stock of these Federal Land Banks public funds to the amount of \$8,892,130. That is, of the \$9,000,000 required under the Act as the total initial capital of the twelve Federal Land Banks (\$750,000 each) the Government took stock to the amount of \$8,892,130. On July 1, 1919, the Secretary of the Treasury was still the holder, on behalf of the United States, of \$8,265,809 in par value (*id.* p. 9).

These Federal Land Banks have taken from the owners of farm lands a large amount of mortgage notes and have made loans to the respective borrowers payable in installments extending over thirty-six years. After depositing these mortgages and notes with the Farm Land Registrar of the district (a federal official appointed by the Federal Farm Loan Board) the Federal Land Banks have issued Farm Loan Bonds and large amounts of these bonds have been sold to investors throughout the country (*id.* pp. 3, 4). Every Farm Loan Bond thus issued contains on its face a certificate, under section 21 of the Act, that it is issued under the authority of the Federal Farm Loan Board, has the approval in form and issue of that Board, is legal and regular in all respects and that it is not taxable by national, state, municipal or local authority.

Up to September 30, 1919, the Federal Land Banks had issued Farm Loan Bonds under the Act to the amount of \$285,600,000. Under Section 32 of the Act, as amended on January 18, 1918, the Secretary of the Treasury has purchased Farm Loan Bonds issued by the Federal Land Banks to the amount of \$149,775,000, of which about \$135,000,000 were held in the Treasury of the United

States on September 30, 1919 (*id.* p. 9). That is to say, over \$150,000,000 of these bonds are held by the public.

The Federal Land Banks, on September 30, 1919, were the owners of United States Bonds to the amount of \$4,230,805 (*id.*).

Under Section 32 of the Act, the Secretary of the Treasury has made considerable deposits of public moneys for the temporary use of the Federal Land Banks, a statement of which is set forth in the bill (*id.* p. 8).

During the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President, at the request of the Secretary of Agriculture, having set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three Federal Land Banks mentioned have made upwards of 15,000 of these seed grain loans, aggregating upwards of \$4,500,000, and are now engaged in collecting these loans, all of which were secured by crop liens. The Federal Land Banks acted in this matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks but no compensation.

ARGUMENT.

The Act provides for the organization of financial aid in order to foster agricultural development throughout the country in a systematic manner by restricted loans at low rates of interest to cultivators of the soil. The Government provides the initial capital of the Federal Land Banks and authorizes the issue under the direction of Federal officers of Farm Loan Bonds to provide the additional moneys required.

Congress also takes the opportunity of creating, as it may, new financial institutions, which are available as aids to the Government in its fiscal operations.

We find it unnecessary to review the observations of appellant's counsel as to the genesis of the Act, as we find nothing which militates against its validity and we are not concerned with the apparent efforts of counsel to create an atmosphere. The fact that the matter was carefully considered, that there was an investigation abroad, and that in foreign countries the necessity for stimulating agricultural development by extending credits was recognized, certainly furnishes no argument against the Act. The most that can be said is that it points to a widespread need and a matter of the gravest public concern, which Congress was not compelled to ignore.

The question before the Court is not whether the measure is wise or expedient; that was a political question to be determined by Congress according to its judgment of the Nation's needs. This Court has had recent occasion to reiterate the familiar principle of judicial action that the Court does not undertake to review the motives of Con-

gress (*Hamilton, Collector v. Kentucky Distilleries & Warehouse Co.*, and other cases, decided December 15, 1919).

The bill assails the Federal Farm Loan Act in its entirety, thus challenging the validity of the organization of the Federal Land Banks and the issue of the Farm Loan Bonds. It was conceded in the Court below, and we suppose that it will not be disputed here, that the question of the validity of the tax exemption feature of the Act is not an independent one. The validity of that feature of the Act is a corollary to the determination of the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. Congress expressly declared that these bonds should be deemed to be instrumentalities of the Government of the United States and as such should be certified by the federal officers composing the Federal Farm Loan Board as regularly issued and exempt from taxation. The question is thus not as to intent but as to power. And there is no room for controversy as to the power to give the prescribed immunity if Congress had the power to create these corporations and to provide for the issue of these bonds.

In support of the Act we present these points:

(1) Congress has authority to create corporations whenever this is a means appropriate to facilitate the Government in the exercise of any proper function.

(2) Congress had authority to provide for the investment of public moneys in the capital stock of the Federal Land Banks, to be employed in the making of loans for the purpose of encouraging

agricultural development throughout the country, and to provide for the borrowing of money through the issue of Farm Loan Bonds for the same purpose.

(3) Congress had authority to create the Federal Land Banks as instrumentalities of the Government to act as depositories of public moneys and as financial agents of the Government, and to equip the banks thus established with power to issue Farm Loan Bonds for the described purposes.

(4) Congress had power to protect from taxation the Federal Land Banks thus created and the Farm Loan Bonds thus issued under its authority.

FIRST.—Congress has authority to create corporations whenever this is a means appropriate to facilitate the Government in the exercise of any proper function.

The authority to create corporations is not specified as one of the powers of Congress, but it is embraced within the general power "to make all laws which shall be necessary and proper for carrying into execution" any of the powers vested in the Federal Government (Const., Art. I, sec. 8, subd. 18). It is well established that the words "necessary and proper" do not mean *indispensable*, but that Congress is authorized to select any means that may be in any way appropriate to assist the Government in the exercise of its constitutional functions. The degree of the necessity

is not a question of judicial cognizance. "The power of creating a corporation," said Chief Justice Marshall, in *M'Culloch v. Maryland*, 4 Wheat. 316, 411, 421, 423, "though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. . . . The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is, therefore, perceived, why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them. . . . We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . . That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved. . . . But where the law is not prohibited, and is really

calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power." (See also, *Osborn, v. The Bank of the United States*, 9 Wheat., 738, 861; *National Bank v. United States*, 107 U. S., 445, 448; *California v. Central Pacific R.R. Co.*, 127 U. S., 1, 39; *Luxton v. North River Bridge Co.*, 153 U. S., 525, 529.)

In determining, then, whether Congress had power to create the corporations in question the Court has merely to consider whether they can be deemed to be appropriate to aid in the execution of any authority with which Congress is entrusted.

SECOND.—Congress had authority to provide for the investment of public moneys in the capital stock of the Federal Land Banks, to be employed in the making of loans for the purpose of encouraging agricultural development throughout the country, and to provide for the borrowing of money through the issue of Farm Loan Bonds for the same purpose.

The Federal Government through officers appointed for that purpose established the twelve Federal Land Banks, and, with the exception of a trifling amount, provided the entire initial capital. The Federal Farm Loan Board, composed of the Secretary of the Treasury and the appointees of the President, not only has continuously broad powers of control over the operations of these Federal Land Banks, but at the outset that Board appointed all the directors of each bank and these directors chose from their number

the officers of the bank and employed such attorneys, assistants and other employees as were necessary, subject to the approval of the Federal Farm Loan Board (sec. 4). The Act contemplated that the temporary organization of the Federal Land Banks should yield to a permanent organization consisting in the case of each bank of a board of directors of nine members, three of whom are to be appointed by the Federal Farm Loan Board. But by the amendment of January 18, 1918 (40 Stat. 431), the temporary organization is to be continued indefinitely, that is, it is to continue in the case of any Federal Land Bank so long as any Farm Loan Bonds issued by that bank are held by the Treasury of the United States. As already stated, the Government holds \$135,000,000 of these bonds, and it may hold these bonds for a long time to come. Further, the Federal Farm Loan Board has appointed a Farm Loan Registrar in each Land Bank District and also Land Bank Appraisers and Examiners. These appointees are public officers (sec. 3), and they and their successors are to perform their prescribed official functions as long as the Federal Land Banks exist.

Putting aside matters of form, it is plain that at the outset the Federal Land Banks are incorporated bureaus of the Government, and that up to the present time each of them has been, and for an indefinite time will be, directly and completely managed by those selected and controlled by Federal officers. At the start, the moneys available for loans were those supplied by the Treasury through its investment of the public funds in the capital stock of the Federal Land Banks, and the additional moneys used for the same purpose have been obtained by borrowing money on Farm Loan Bonds issued by the Federal Land Banks

under the direction of the Federal Farm Loan Board, which controls the issue and terms of these bonds. It is in this manner that all the outstanding Farm Loan Bonds issued by the Federal Land Banks have been placed in the hands of investors.

We thus come at once—apart from mere considerations of method and form—to the question of the power of Congress to appropriate the public money and to provide for the borrowing of money with the object of securing agricultural development throughout the country and thus assuring the Nation's essential food supply.

We conceive it to be demonstrable that Congress is not lacking in power to apply the public money, whether raised by taxation or by the exercise of the borrowing power, for this great public purpose. And it would necessarily follow that Congress having that power was free to act directly through the Treasury, or, if it saw fit, to organize moneyed institutions in order to afford a convenient instrumentality to achieve the same end. In this view, Congress was competent to establish the Federal Land Banks, to supply moneys by investment in the capital stock of these banks, and to provide for bond issues to raise additional moneys, to be used in a general and systematic manner throughout the country to stimulate the cultivation of the soil, as well as to create these financial institutions which would be available as governmental agencies, in addition to the facilities already existing, in connection with the fiscal operations of the Treasury.

These propositions, we believe, are abundantly supported by principle and practice.

The taxing power.

The objects to which the public money may be devoted are implied in the provision of the Constitution relating to the taxing power. This is that Congress shall have power

“To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States”. (Art. I, sec. 8, subd. 1.)

There have been three views, representing serious differences of opinion, as to the meaning and scope of the clause—“provide for the common defence and general welfare of the United States.”

One view, which at times has been advanced, is that these words do not qualify the preceding clause with respect to the laying of taxes, etc., but confer an independent power. The conclusive reason for rejecting this interpretation is that it would render nugatory the subsequent specification of the powers of Congress, as the Constitution would thus be deemed, in one sweeping clause, to confer upon Congress the authority to do anything which in its judgment might be regarded as conducive to the general welfare of the United States. Accordingly, the accepted view is that this clause does not create an independent power, but qualifies the provision giving the taxing power, that is, it states the purposes for which the taxing power may be exercised.

With this postulate, a second view is that the clause has no separate significance, but is limited and explained by the subsequent enumeration of the powers of Congress, to which it is a mere introduction. (See President Madison's letter to Mr. Stevenson, November 27, 1830; Virginia

Resolutions, January 7, 1800; 4 Elliot's Deb., 236, 280-281; Tucker on the Constitution, secs. 223-238). It is not questioned that this opinion has been held by eminent men, but we believe it to be inconsistent with accepted principles of constitutional construction and to be opposed to the decided weight of opinion and to the established practice since the Constitution was adopted. As Mr. Justice Story says, "there is a fundamental objection to the interpretation thus attempted to be maintained, which is, that it robs the clause of all efficacy and meaning. No person has a right to assume that any part of the Constitution is useless, or is without a meaning; and *a fortiori* no person has a right to rob any part of a meaning, natural and appropriate to the language in the connection in which it stands. Now, the words have such a natural and appropriate meaning as a qualification of the preceding clause to lay taxes. Why, then, should such a meaning be rejected?" (Story on the Constitution, sec. 912). In *Holmes v. Jennison*, 14 Pet., pp. 570, 571, it was said by Chief Justice Taney: "In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. * * * No word in the instrument, therefore, can be rejected as superfluous or unmeaning." The arguments in support of this second view would seem to ignore this principle. Their elaboration cannot avail to obscure the fact that they endeavor to explain away the express words which qualify the taxing power; instead of expounding and applying, they seek to rewrite the Constitutional provision.

The third and prevailing view is that the clause does not confer an independent power, and yet is not superfluous as a mere introduction to, or as limited by, the subjoined enumeration of powers, but has its separate significance as prescribing the limits of the taxing power, and thus, by necessary implication, as defining the objects for which the public money may be appropriated by Congress. This view has the weighty support of Hamilton, Marshall and Story.

Mr. Hamilton, in his Report on Manufactures (December 5, 1791) said:

"The National Legislature has express authority 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare,' with no other qualifications than that 'all duties, imposts, and excises shall be uniform throughout the United States; and that no capitation or other direct tax shall be laid, unless in proportion to numbers ascertained by a census or enumeration, taken on the principles prescribed in the Constitution', and that 'no tax or duty shall be laid on articles exported from any State.'

"These three qualifications excepted, the power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts, and the providing for the common defence and general welfare. The terms 'general welfare' were doubtless intended to signify more than was expressed or imported in those which preceded; otherwise, numerous exigencies incident to the affairs of a nation would have been left without a provision. The phrase is as comprehensive as any that could have been used, because it was not fit that the constitutional authority of the Union to appropriate its revenues should have been restricted with-

in narrower limits than the 'general welfare,' and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition.

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money.* The only qualification of the generality of the phrase in question, which seems to be admissible, is this: that the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot.

"No objection ought to arise to this construction, from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to *appropriate money* with this latitude, which is granted, too, in express terms, would not carry a power to *do any other thing not authorized in the Constitution*, either expressly or by fair implication." (See also Hamilton's "Opinion on the Bank of the United States", February 23, 1791.)

There would seem to be no doubt that President Washington took the same view (Story on the Constitution, sec. 978, *note*).

Mr. Jefferson, in his opinion on the Bank of the United States, February 15, 1791 (4 Jefferson's Correspondence, 524, 525), says:

"To lay taxes to provide for the general welfare of the United States is to lay taxes

for the purpose of providing for the general welfare. For the laying of taxes is the power, and the general welfare the purpose for which the power is to be exercised." (See as to Jefferson's views, 1 Story on the Constitution, sec. 926, note.)

In the paper of President Monroe, entitled "Views of the President of the United States on the Subject of Internal Improvements" (transmitted to Congress in connection with his veto of the Cumberland Road Bill, May 4, 1822), which Mr. Justice Story describes as "the most thorough and elaborate view, which perhaps has ever been taken of the subject," it was argued that the clause in question does not confer upon the Federal government additional powers of control, but does authorize the laying of taxes and consequently the making of appropriations for purposes within the stated limits, thus enabling Congress to appropriate money in aid of enterprises which the general government cannot undertake or directly control (See Willoughby on the Constitution, sec. 269; Story on the Constitution, secs. 979-990). President Monroe said:

"If we look to the second branch of this power, that which authorizes the appropriation of the money thus raised, we find that it is not less general and unqualified than the power to raise it. More comprehensive terms than to 'pay the debts and provide for the common defence and general welfare' could not have been used. So intimately connected with and dependent on each other are these two branches of power that had either been limited the limitation would have had the like effect on the other. . . . Had it been intended that Congress should be restricted in the appropriation of the public money to such expenditures as were authorized by a

rigid construction of the other specific grants, how easy would it have been to have provided for it by a declaration to that effect. The omission of such declaration is therefore an additional proof that it was not intended that the grant should be so construed.

"If, then, the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants according to a strict construction of their powers, respectively, is there no limitation to it? Have Congress a right to raise and appropriate to any and to every purpose according to their will and pleasure? They certainly have not. The Government of the United States is a limited government, instituted for great national purposes, and for those only. Other interests are committed to the States, whose duty it is to provide for them. Each government should look to the great and essential purposes for which it was instituted and confine itself to those purposes. . . . My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense and of general, not local, national, not state, benefit."

In *Gibbons v. Ogden*, 9 Wheat. 1, 199, Mr. Chief Justice Marshall said that "Congress is authorized to lay and collect taxes, etc., to pay the debts, and provide for the common defence and general welfare of the United States." That we are not misconceiving the purport of this quotation is evident from the use which Mr. Justice Story makes of it (1 Story on the Constitution, sec. 927).

(See also Mr. Adams' letter to Mr. Stevenson, July 11, 1832; 2 Elliot's Deb., 170, 183, 195, 328, 344; 3 *id.*, 262, 290; 4 *id.*, 226; Mr. Justice Miller's "Lectures on the Constitution," pp. 229-231, 235.)

In the course of an exhaustive examination of the question, Mr. Justice Story thus states what is deemed to be the true construction of the constitutional provision (1 Story on the Constitution, secs. 922-924) :

“A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under such circumstances, necessarily a qualified power. If it is so, how then does it affect or in the slightest degree trench upon the other enumerated powers? . . . Each has its appropriate office and objects; each may exist without necessarily interfering with or annihilating the other (sec. 922). . . . But then, it is said, if Congress may lay taxes for the common defence and general welfare, the money may be appropriated for those purposes, although not within the scope of the other enumerated powers. Certainly, it may be so appropriated; for if Congress is authorized to lay taxes for such purposes, it would be

strange, if, when raised, the money could not be applied to them. That would be to give a power for a certain end, and then deny the end intended by the power (sec. 923). . . . That the same means may sometimes or often be resorted to, to carry into effect the different powers, furnishes no objection; for that is common to all governments. That an appropriation of money may be the usual or best mode of carrying into effect some of these powers, furnishes no objection; for it is one of the purposes for which the argument itself admits that the power of taxation is given. That it is indispensable for the due exercise of all the powers may admit of some doubt. The only real question is, whether, even admitting the power to lay taxes is appropriate for some of the purposes of other enumerated powers (for no one will contend that it will, of itself, reach or provide for them all), it is limited to such appropriations as grow out of the exercise of those powers. In other words, whether it is an incident to those powers, or a substantive power in other cases, which may concern the common defence and the general welfare. *If there are no other cases which concern the common defence and general welfare, except those within the scope of the other enumerated powers, the discussion is merely nominal and frivolous. If there are such cases, who is at liberty to say that, being for the common defence and general welfare, the Constitution did not intend to embrace them?* The preamble of the Constitution declares one of the objects to be, to provide for the common defence and to promote the general welfare; and if the power to lay taxes is in express terms given to provide for the common defence and general welfare, what ground can there be to construe the power short of the object,—to say that it shall be merely auxiliary to other enumerated

powers, and not coextensive with its own terms and its avowed objects? One of the best established rules of interpretation, one which common-sense and reason forbid us to overlook, is, that when the object of a power is clearly defined by its terms, or avowed in the context, it ought to be construed so as to obtain the object, and not to defeat it. The circumstance that, so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or denied to have any operation? If the people frame a constitution, the rulers are to obey it. Neither rulers nor any other functionaries, much less any private persons, have a right to cripple it, because it is, according to their own views, inconvenient or dangerous, unwise or impolitic, of narrow limits or of wide influence" (*italics ours*).

These observations are quoted at length, for the argument could not be stated more convincingly and, in the absence of an explicit determination by this Court, it is believed that no words are entitled to greater weight. Mr. Justice Story was well acquainted with all opposing views and had critically studied them, and after reviewing the question from every angle and carefully examining the proceedings of the Constitutional convention, he reached the definite conviction which he sets forth in his commentaries. (*id.* secs. 906-932; 967-991).

While this Court has not definitely passed upon the construction of the clause with reference to the scope of the power of appropriation (see *United States v. Realty Co.*, 163 U. S., 427, 440), there are general expressions supporting the view that the words—"provide for the common de-

fence and the general welfare of the United States"—are to be taken as qualifying the power to lay taxes. See *Gibbons v. Ogden*, *supra*. In *United States v. Gettysburg Electric Railway Company*, 160 U. S., 668, 681, it is said: "It (Congress) has the great power of taxation to be exercised for the common defense and general welfare"; and this statement was made as a part of the reasoning of the court in sustaining the power of the United States to condemn land for the preservation of the battlefield of Gettysburg, as being for a public use, as it made direct appeal to patriotic sentiment and tended to enhance "love and respect for those institutions for which these heroic sacrifices were made" (*id.* p. 682). When the validity of the sugar bounty provision in the Tariff Act of October 1, 1890 (26 Stat., 567, par. 231), was challenged, the court found it unnecessary to decide the question (*Field v. Clark*, 143 U. S., 649, 695). Later, when, after the repeal of that provision Congress passed the Act of March 2, 1896 (28 Stat., 910, 933), providing a similar bounty upon sugar manufactured and produced before the repeal, it was held that the appropriation was valid, as being in the discharge of a moral obligation which Congress was entitled to recognize as a "debt" within the fair meaning of the constitutional provision (*United States v. Realty Co.*, *supra*; *Allen v. Smith*, 173 U. S. 389, 394, 402). Certainly, this court has never decided adversely to the power of Congress to meet by its appropriations great national needs and has never construed the taxing clause otherwise than in accord with the construction placed upon it by Hamilton, Jefferson, Marshall, Monroe and Story.

**Practical Construction of the power of Congress
to appropriate the public money.**

The power to tax and the power to appropriate the moneys raised by taxation are addressed to the same objects. The latter is qualified to the same extent as is the former. To hold otherwise, as Story says, "would be to give a power for a certain end, and then deny the end intended by the power." Congress, from the foundation of the government, has proceeded upon the view that the powers specified in the subsequent provisions of the Constitution do not limit its authority to appropriate money for the common defense and general welfare of the United States under the clause relating to taxes. Mr. Justice Story thus states the experience of the first forty years of our history (1 Story on the Constitution, sec. 991):

"In regard to the practice of the government, it has been entirely in conformity to the principles here laid down. Appropriations have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities; as in the relief of the St. Domingo refugees, in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812. (See Act of 12th Feb., 1794, Ch. 2; Act of 8th May, 1812, Ch. 79; 4 Elliot's Debates,

240). An illustration equally forcible of a domestic character, is in the bounty given in the cod fisheries, which was strenuously resisted on constitutional grounds in 1792, but which still maintains its place in the statute book of the United States" (See Act of 16th Feb., 1792, Ch. 6; 4 Elliot's Debates, 234-238).

In addition to the instances mentioned by Mr. Justice Story, we have numerous illustrations afforded by the action of Congress since his day. The annual appropriations show a practically continuous assertion of broad authority in the application of money, as, for example, in the support of the Bureau of Education (including the special provision for aiding the Education of the Blind, Act of March 3, 1879, Chap. 186, 20 Stat., 467), of the Smithsonian Institution, and of the constantly expanding and varied work of the Department of Agriculture (See, *e. g.*, Act of August 11, 1916, Chap. 313, 39 Stat., pp. 452-456; 463-467; 470). The validity of such action has not been questioned, and as Professor Willoughby says, "the doctrine has become an established one that Congress may appropriate money in aid of matters which the Federal Government is not constitutionally able to administer and regulate." (Willoughby on the Constitution, sec. 269.) Mr. Justice Story sums up the matter by saying (sec. 977): "The argument in favor of the power" (to appropriate money for the common defense and general welfare) "is derived in the first place, from the language of the clause conferring the power (which, it is admitted, in its literal terms, covers it); secondly, from the nature of the power, which renders it in the highest degree expedient, if not indispensable, for the due operations of

the national government; thirdly, from the early, constant, and decided maintenance of it by the government and its functionaries, as well as by many of our ablest statesmen, from the very commencement of the Constitution. So, that it has the language and intent of the text, and the practice of the government, to sustain it against an artificial doctrine set up on the other side."

Nothing could better illustrate the accepted principle than the appropriations to aid in agricultural development. Since the year 1839 there has been a constant disbursement of public moneys in the promotion and fostering of agriculture, in disseminating information, distributing seeds, and in aiding agricultural schools. For upwards of sixty years—since the Act of 1857 (11 Stat. 226)—Congress has made provision for the distribution of cuttings and seeds. It was in that year also that provision was made for investigation as to the consumption of cotton (*id.*).

The Department of Agriculture was established in 1862 (12 Stat. 387). The Act provided as to this department:

"the general designs and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

The far-sighted policy of the Morrill Land Grant Act of 1862 (12 Stat. 503) made possible through donations of public land the establishment of institutions for instruction in agriculture throughout the country. Funds have been pro-

vided to maintain bureaus of agricultural statistics, for the introduction and protection of insectivorous birds, for laboratories to engage in experimentation in agricultural chemistry (12 Stat. 69). The great pests, or enemies of crops, have been the subject of constant consideration, and frequent appropriations have been made to aid in their elimination (21 Stat. 259; 40 Stat. 374).

In 1884, the Bureau of Animal Industry was established to disseminate information as to domestic animals and their diseases (23 Stat. 277). In 1890, the weather bureau was put in charge of the Department of Agriculture (26 Stat. 653), to make more readily available comprehensive information as to matters of special interest to those engaged in the cultivation of the soil.

The Irrigation Survey was established in 1889 under the direction of the Secretary of the Interior (25 Stat. 960), and in 1913, the Bureau of Mines (37 Stat. 681).

The scope of the activities of the Department of Agriculture now embraces those of the Weather Bureau; the Bureau of Animal Industry (including inspection and quarantine work, the eradication of scabies in sheep and cattle, tuberculin and mallein testing, experiments in animal feeding and breeding, including co-operation with State agricultural experiment stations, scientific investigations of hog cholera and other diseases of animals); the Bureau of Plant Industry (including investigations of diseases of plants, of orchard and other fruits, of forest and ornamental trees and shrubs, of soil bacteriology and plant-nutrition, of soil fertility, of plants yielding drugs, poisons and oils, of cereals and cereal disease, of sugar beets, and generally of crop produc-

tion, and the purchase and distribution of valuable seeds, bulbs, shrubs, vines, cuttings and plants); the Forest Service (including various investigations in forestry); the Bureau of Chemistry (embracing various chemical and physical tests and biological investigations of food products); the Bureau of Soils (including investigations of soil types and chemical properties, of productivity and as to possible sources of supply of potash, nitrates, etc.); the Bureau of Entomology (including investigations of insects affecting fruits, orchards, vineyards and crops); the Bureau of Biological Survey (including the investigation of the food habits of birds and mammals in relation to agriculture); the Division of Publications; the Bureau of Crop Estimates (covering all important data relating to agriculture); the States Relations Service (including farmers' co-operative demonstration work in connection with State organizations, and for the study of methods to combat the cotton-boll weevil); the Office of Public Roads and Rural Engineering (including investigations as to farm irrigation and drainage and construction of farm buildings); the Office of Markets and Rural Organization (including investigations of marketing methods, studies of co-operation among farmers in rural credits and other forms of co-operation in rural communities); and the Federal Horticultural Board (See 39 Stat. 446-476; 1134-1166; 40 Stat. 973-1008).

The federal appropriations in 1917, in support of agriculture amounted to upwards of \$29,000,000, and in 1918 to upwards of \$45,000,000.

There can be no question as to the continuous practical construction of the powers of Congress to raise and appropriate money to the effect that

this power is not limited to the objects enumerated in the subsequent provisions, but extends what may properly be deemed to be embraced within the general welfare as expressly provided in the clause which confers the taxing power itself.

As Mr. Chief Justice Marshall said in *M'Culloch v. Maryland*, 4 Wheat, 316, 401:

“An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded.”

The borrowing power.

What has been said with respect to the scope of the taxing power of Congress is applicable to the borrowing power. Certainly, the borrowing power is not more limited as to its objects than the taxing power.

The Constitution provides (Art. I, sec. 8, subd. 2) that Congress shall have power “To borrow money on the credit of the United States.” It is well settled that this power is an independent power which is given without limitation. As was said by Mr. Justice Gray, in *Juilliard v. Greenman*, 110 U. S., p. 444: “The words ‘to borrow money,’ as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.”

It is manifest that if Congress is entitled to ap-

ply the public money for the common defense and the general welfare of the United States, it necessarily has a wide range of discretion with respect to the objects to be selected. This discretion is not vested in the courts, but in Congress, and the authority of the courts to enforce constitutional restrictions does not entitle them to substitute their judgment for that of Congress as to any question of expediency or policy. (*Wilson v. New*, 243 U. S. 332; *Champion v. Ames*, 188 U. S., p. 363; *McCray v. United States*, 195 U. S., p. 55.) As has been said by Judge Cooley ("Taxation", 3d Ed., pp. 188, 189):

"It is otherwise with the federal Union also; for though its powers are not general like those of the state, but are limited and defined by the federal constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes require broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections."

And if the action of Congress in applying public money may be judicially controlled, it is clear that this control could properly be exercised only in a case where it was perfectly plain that the broad limits of legislative discretion had been exceeded and that the application could not from any reasonable point of view be regarded as conducive to the common defense and general welfare.

The purposes of the Federal Farm Loan Act are public, not private; national, not local.

It must be apparent that Congress has power to employ the public moneys, whether raised by taxation or by the exercise of the borrowing power, for the purposes set forth in the Federal Farm Loan Act, unless it can be said—overriding the judgment of Congress—that these purposes are not public, but private, not national, but local.

But it is submitted that the argument challenging the act as one for private or local purposes is wholly untenable.

It will hardly be disputed that the agricultural interests of the country, broadly considered, are of National and not merely of State concern. Any view that would treat the food supply of the people as not a matter directly related to the common defense and general welfare of the United States would be so narrow as to be quite inadmissible. The deliberate judgment of Congress, as already stated, is shown in the wide range of its departmental appropriations. The objection to the validity of the action of Congress in the present case, so far as it relates to the provision for the use of money (as distinguished from the actual conduct of agricultural activities within the States), must rest, it would seem, not upon the fact that the provision is in aid of the agricultural interests of the United States but upon the ground that it is designed to provide loans to owners of farm lands. The objection, then, is found to be a single one—that the purpose is private because of the benefit to individual cultivators of the soil.

It is, of course, a fundamental proposition that taxation must be for a public purpose. On this principle, State legislation authorizing municipali-

ties to issue bonds in aid of private enterprises has been declared in certain cases to be invalid. (See *Loan Association v. Topeka*, 20 Wall., 655; *Parkersburg v. Brown*, 106 U. S., 487; *Cole v. LaGrange*, 113 U. S., 1.) It may also be assumed that the provision conferring upon Congress the power to lay taxes, and hence the power to appropriate the public money to "provide for the common defence and general welfare of the United States", cannot be deemed to confer authority to do either for a purpose essentially private. But this familiar doctrine does not reach this case.

Just as well established is the principle that a purpose is not essentially a private one from the constitutional standpoint simply because private individuals may secure direct benefits through its execution. When direct individual benefit is involved, the question must always be, on a fair analysis, whether that benefit constitutes the object or is merely incidental to the public advantage which it is competent for the legislature to secure. Great measures of an undoubted public nature and advantage often carry with them benefits to individuals, or to classes of persons, whose immediate gain does not obscure the relation of the measures to the general welfare. Thus, it is recognized that while irrigation and drainage plans, which have become familiar subjects of legislation in many States, may directly benefit the owners of the property which is to be watered or drained, the scheme may still bear such a relation to the public welfare as to accord with the legal conception of a public use; and, in this view, legislation providing for the organization of irrigation and drainage districts in order to improve the property within them has been sustained.

Thus, it was said by this Court in *Fallbrook Irrigation District v. Bradley*, 164 U. S., 112, 161, 164:

“To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the land owners, or even to any one section of the State. The fact that the use of the water is limited to the land owner is not therefore a fatal objection to this legislation. It is not essential that the entire community or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use. All land owners in the district have the right to a proportionate share of the water, and no one land owner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water. . . . Taking all the facts into consideration, . . . we have no doubt that the irrigation of really arid lands is a public purpose, and the water thus used is put to a public use.”

In *Clark v. Nash*, 198 U. S. 361, the question was as to condemnation for an enlarged irrigation ditch. It was insisted by the plaintiffs in error that the proposed use of the enlarged ditch across their land was not a public use. They argued “that no individual has the right to condemn land for the purpose of conveying water in ditches across his neighbor’s land, for the purpose of irrigating his own land alone, even where there is, as in this case, a state statute permitting it”. But the Court declined to sustain this contention, holding that the fact that the individual was to benefit was not necessarily controlling,

and that the exigencies of soil and climate might properly be taken into consideration.

Strickley v. Highland Boy Gold Mining Company, 200 U. S. 527, affords a striking illustration. The proceeding was one to condemn a right of way for an aerial bucket line across a placer mining claim of the plaintiffs in error. The Court again recognized "the inadequacy of use by the general public as a universal test" and that the public welfare of a state might demand that such rights of way should be accorded for aerial lines between the mines upon its mountain sides and the railways in the valleys below and hence that it could not be said that the individual benefit to the land owner in question took the case out of the category of permissible condemnation. As was said in *Hairston v. Danville & Western Railway Company*, 208 N. Y. 598, 606, the determination of the question by the courts whether the nature of the use was public or private had been influenced "by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people."

In *O'Neill v. Leamer*, 239 U. S. 244, the plaintiffs in error contended that the drainage plan in question was simply one for the private advantage of the property owners benefited. But the Court said that "States may take account of their special exigencies, and when the extent of their arid or wet lands is such that a plan for irrigation or reclamation according to districts may fairly be regarded as one which promotes the public interest, there is nothing in the Federal Constitution which denies to them the right to formulate this policy or to exercise the power of eminent domain

in carrying it into effect. * * * Nor is it an objection that private property within the district, which is established in execution of the public policy, will be benefited" (*id.*, p. 253; see also *Houck v. Little River Drainage District*, 239 U. S. 254).

In these cases, this Court in enforcing the Fourteenth Amendment has recognized the propriety of giving weight to State exigencies and of regarding with great respect the judgment of the State courts upon what should be deemed public uses within the State. Certainly, no less weight should be accorded to the determinations of Congress as to what is required for the general welfare of the country. If the fact that individuals are to benefit directly from the execution of the approved policy does not require the conclusion that the purpose is private in the one case, it does not require such a conclusion in the other. And when it is contended that provision by Congress for the use of public money is for a purpose essentially private, it cannot be doubted that due respect to the judgment of Congress requires the consideration of all the circumstances and conditions which can possibly support its action; and although this action takes a form through which direct advantages are to accrue to individuals, or groups, there must still be the inquiry whether, notwithstanding this fact, the provision can be regarded as being for a purpose not special, private, or local, but in truth general and national.

Is then, the plan of the Federal Farm Loan Act primarily in aid of private or individual interests as distinguished from the common defense and general welfare of the United States?

With respect to the features of the plan it is to be noted,

(1) The Act provides a *system* designed to promote agricultural development.

(2) The loans are made only to those who are, or are about to become, actual cultivators of the soil, and are made upon the security of farm mortgages.

(3) These mortgage loans are made only for the following purposes: (a) to provide for the purchase of land for agricultural uses; (b) to provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; (c) to provide buildings and for the improvement of farm lands ("equipment" and "improvement" to be defined by the Federal Farm Loan Board); and (d) to liquidate indebtedness of the owner of the land mortgaged existing at the time of the organization of the first National Farm Loan Association within the county, or indebtedness subsequently incurred for the purposes above mentioned. No loan is to exceed fifty percent of the value of the land mortgaged and twenty percent of the value of the permanent insured improvements thereon and the amount of loans to any one borrower is not to exceed \$10,000.

(4) The system is for continental United States (save Alaska), that is, the mortgage loans are to be available to actual cultivators of the soil throughout the country.

It is thus apparent that the Act provides for systematic aid to the development of agriculture, so devised as to be generally available throughout the country and so limited as to indicate the purpose to promote the actual cultivation of the soil in every part of the United States where cul-

tivation is possible and where aid is needed for that specific purpose.

That this method of providing financial aid was deemed to be essential to the welfare of the country clearly appears from an examination of the views which prevailed in Congress. The cultivators of the soil, whose activities form the necessary foundation of the common prosperity, were lacking in the facilities which would enable agricultural development to be pressed to the utmost in response to the National exigency. To say the least this view was an entirely reasonable one. It makes no difference whether or not the Court would take the same view, as we submit that the Court would be unable to say that it was so destitute of foundation that it could not be entertained by Congress. The matter was peculiarly one for the exercise of the legislative discretion. That credit difficulties were an embarrassment to cultivators of the soil was not confined to any one section of the country. The significant thing in the prolonged hearings that were had upon this subject by committees of Congress was that the same difficulties were encountered throughout the country and that a systematic country-wide relief appeared to be of grave importance. In the report of the Committee on Banking and Currency in May, 1916 (H. R. Report, No. 630) it was said:

"It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-

land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

To say that Congress was limited to the expenditure of many millions of dollars in investigations, maintenance of bureaus, inspections, purchase and distribution of seeds and plants, co-operation with States in experimentation, furnishing of bulletins and of statistical information, in order to foster agricultural development, and could not undertake this organization of financial aid which was essential to that development, would be to establish an artificial distinction unknown to the Constitution and to conceive a Government not deserving to be called National.

Nor can the legislation be condemned as being outside the sphere of permissible Federal action without taking into consideration the existing exigencies within the contemplation of Congress. While the United States was not at war when this legislation was enacted, and the question is not one relating to the exercise of power incident to the actual conduct of war, it remains true that the Act was passed at a time when many of the civilized nations were at war and the question of maintenance of the food supply was of first importance. Even if it be assumed that our entry into the war was not then contemplated, there was still a serious emergency due to the devastation of the war

and the withdrawal from agriculture of productive labor. The exigency which later was recognized by every one with respect not only to the food supply of this country, but of the world, it was within the power of Congress to foresee. If the words—"provide for the common defence and general welfare of the United States"—while not creating an independent power, do qualify the power to lay taxes and to make appropriations, and are not deemed to be limited by the succeeding specification of powers, it would be difficult to imagine a matter more important for the consideration of Congress, as pertaining to the general welfare, than the stimulation of agricultural development in the light of the situation existing in the year 1916.

We are at a loss to understand in view of these circumstances upon what ground systematic encouragement of the cultivation of the soil could possibly be regarded as not a matter of public and national concern.

The Farm Loan Act deals with pecuniary aid alone, that is, it is concerned only with the application of money.

There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over the lands within their borders.

The case of *Kansas v. Colorado*, 206 U. S. 46, which counsel for the appellant stresses, is not at all in point. There is an obvious distinction between the provision for financial aid, which is within the power of Congress as expressly con-

ferred and as understood from the foundation of the Government, and the conduct of activities and the management of concerns within the State which lie outside the power of Congress.

The case of *Kansas v. Colorado* was an original suit brought to restrain Colorado from diverting the water of the Arkansas River for the irrigation of lands in Colorado and thus preventing, as was alleged, the natural and customary flow of the river into Kansas. The United States filed a petition for intervention, asserting the right to control the waters of the river to aid in the reclamation of arid lands. The contention was that "the determination of the rights of the two states *inter sese* in regard to the flow of waters in the Arkansas River" was "*subordinate to a superior right to control the whole system of the reclamation of arid lands*". It was recognized in the opinion of Mr. Justice Brewer that the National Government had full power to dispose of and make all needful rules and regulations respecting its own property, but the power over its own property did not embrace a grant to Congress of legislative control over the States. Appreciating this, the Government brought forward the doctrine of "inherent power" as giving to Congress the broad control asserted over the whole subject of reclamation of arid lands. The contention involved the subordination of all proceedings with respect to the *actual conduct* of that reclamation to such as might be provided by the legislation of Congress.

In denying the doctrine of inherent power as asserted, the Court did not in any way limit the familiar scope of the power which the Constitution actually confers. The present question was in no way involved. Here, as has been said, there is

simply the extension of *financial aid*. No one has to take it who does not want it. No one can get it except under the conditions stated, which merely assure systematic aid to promote cultivation of the soil throughout the country. There is no provision for the conduct of agricultural activities and no interference whatever with any right reserved to the States.

To achieve its purposes it was competent for Congress to create the instrumentalities for which the Farm Loan Act provides.

Considering the constitutional power expressly conferred, and the practice from the very beginning with respect to the scope of appropriations, it is manifest that Congress could have provided for dealing with the matter through departmental bureaus without creating corporations. Congress could have made appropriations and, to raise additional moneys, could have exercised the borrowing power by the issue through the Treasury of ordinary obligations of the Government. Having this power, Congress could establish in its discretion a convenient mechanism for the application of money to achieve the desired object. The Federal Land Banks and the Farm Loan Bonds are appropriate means to the end.

In truth, as has been pointed out, at the outset the Federal Land Banks were virtually incorporated bureaus of the Government. With the exception of a very small amount, the Government owned all the stock; the Government appointed the directors and controlled and actually directed everything that was done. No one but a Government officer had anything to say with respect to

the issue of Farm Loan Bonds or the disposition of their proceeds. The Federal Farm Loan Board placed upon the market all the Federal Land Bank Bonds that have been issued. And the Farm Loan Act contains the explicit provision that these bonds must "be deemed and held to be instrumentalities of the Government of the United States."

If it were necessary to present the question, we should urge with confidence that these Federal Land Bank bonds are in truth supported by the good faith and credit of the United States and are protected by virtue of an actual exercise of the borrowing power.

The fact that a special fund is created to meet the liability on the bonds, or that recovery is limited, is by no means controlling. The Government is not liable in any case unless it consents to be, and of course it may fix the measure of liability and provide particular funds or security for payment. But when the Government, to meet a governmental purpose, goes out through its officers to borrow money, and issues bonds in the name of its creature which it not only dominates but directs, and provides that these bonds shall "be deemed and held to be instrumentalities of the Government of the United States," we think that, apart from any question of mere liability to suit, the good faith and credit of the United States lie behind them. Congress had just as much right to provide for the issue of bonds in this way as in any other, unless it can be said—which of course it cannot be—that Congress could not issue bonds and establish a particular security for their payment without admitting liability of the Government to suit.

It may be observed in this connection that in

Briscoe v. Bank of Kentucky, 11 Pet., 257, it was held that the bank notes of a State bank were not bills of credit issued by the State in violation of the Federal Constitution (Art. I, sec. 10), although the State was the only stockholder in the bank. This decision met with a strong dissent from Mr. Justice Story whose views, as he stated (*id.*, p. 350), had been shared by Chief Justice Marshall. Mr. Justice Story said (*id.*, p. 345):

“It is said that the bills are not taken on the credit of the state; because the state has not promised, in terms, to pay them. If it had so promised, the state not being suable, the holder could here have no redress against the state. But I insist that, in equity, and in justice, the bills must be treated as the bills of the state; and that if the state were suable, a bill in equity would lie against the state, as the real debtor; as the real principal; and I say this upon principles of eternal justice, and upon principles as old as the foundations of the common law itself. * * * It has been said at the argument, that funds were provided for the payment of the bills by the provisions of the charter; and therefore no credit to the state, *ultra* these funds, can be inferred. But surely the case of the old colonial bills of credit answers that position. They had funds assigned for their redemption; they in many cases had mortgages upon loans authorized to be made, as they are in the present charter; and yet the legislature called them bills of credit. The colonists did not promise to pay them; and yet they deemed them their bills of credit. Why? Because in truth, and in fact, and not upon any metaphysical subtleties and fictions, they were issued upon the general credit of the state; and if the funds pledged fell short of the payment, the state was bound to redeem them.”

The decision in the *Briscoe* case, overriding the views thus expressed, as Professor Willoughby says "by an extremely loose interpretation" rendered "practically nugatory one of the provisions of the Constitution." (Willoughby on the Constitution, sec. 42, p. 83). This decision and others which followed it (*Woodruff v. Trapnall*, 10 How., 190, *Curran v. Arkansas*, 15 How., 304) were also criticised by Mr. Justice Miller in his "Lectures upon the Constitution" (p. 583) who said: "The exercise of this power of creating a bank with power to issue circulating notes, in which although the bank assumed the nature and character of a corporation doing business in the name of trustees and directors, yet the State itself is the sole owner of the capital stock, is more doubtful and probably would not be sustained at this day." And, certainly, the principle "that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen" (*Bank v. Planters' Bank*, 9 Wheat., p. 907) should not be deemed to be applicable where the Government is acting in its sovereign capacity (See 11 Pet., p. 349).

In view of such criticisms, it may well be doubted whether the decisions in the *Briscoe* case, and in the other similar cases above cited, will be extended beyond the precise point involved, or will be treated as applicable to the transactions of the Government of the United States under the authority of Congress in the exercise of what Congress affirms to be the public functions of the Government.

The borrowing power committed to Congress

is free of limitation. With respect to the fact and effect of its exercise, substance and not form must control. It is difficult to see upon what ground the validity of obligations thus issued pursuant to Act of Congress, for money actually borrowed through an organization which is in substance operating as an incorporated bureau of the Government, under the direction and control of Federal officers in the Department of the Treasury, can successfully be assailed.

But, this question aside, we suppose it to be clear that Congress having power to provide financial aid in order to stimulate agricultural development throughout the country, could organize *the means for providing this financial aid in any appropriate manner according to its judgment*. The decision as to the expediency of the means lies with Congress and not with the courts. If Congress desires to provide a corporate organization as a facility for the accomplishment of its proper purpose there is no ground for denying it the power.

In the language of Mr. Chief Justice Marshall in *M'Culloch v. Maryland* (*supra*) already quoted: "The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else." The only question is whether it is an appropriate means, adapted to a proper end, and not prohibited.

The incorporation of national banks and of railroad companies under acts of Congress afford the most familiar illustrations. The principle applies although the corporation thus constituted as a means to attain a proper governmental end is endowed with powers for the transaction of private business and its stock is held, and its profits

are received, by private individuals. This question was forever set at rest by the decision in *Osborn v. Bank of the United States*, 9 Wheat. 738 (following that of *M'Culloch v. Maryland supra*). Mr. Chief Justice Marshall said in the *Osborn* case (*id.* pp. 860, 861):

“The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no political connection with the government, is admitted; but the Bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the Court, in the case of *M'Culloch v. The State of Maryland*, is founded on, and sustained by, the idea that the Bank is an instrument which is ‘necessary and proper for carrying into effect the powers vested in the government of the United States.’ It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavour to distinguish between this trade and its agency for the public, between its Banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, &c. While they

seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business."

Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29.

Davis v. Elmira Savings Bank, 161 U. S. 275.

Owensboro National Bank v. Owensboro, 173 U. S. 664.

Easton v. Iowa, 188 U. S. 220.

First National Bank v. Union Trust Company, 244 U. S. 416.

The established principle was again re-stated in the recent case of *First National Bank v. Union Trust Company* (*supra*). There, the Court held that it was competent for Congress in establishing the Federal Reserve Board by the Act of December 23, 1913 (38 Stat. 251, 262), to authorize that Board to grant by special permit to national banks, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, that is, to exercise the powers commonly exercised by trust companies. The Court regarded it as settled that the implied power of Congress to confer a particular function upon a national bank is to be tested, not by the nature of the function viewed by itself, but by its relations to all the functions and attributes of the bank considered as an entity. The result of the decision in *Osborn v. The Bank* (*supra*) is thus stated by the Chief Justice:

"Considering more fully, however, the question of the possession by the corporation of private powers associated with its public authority and meeting the contention that the two were separable and the one, the public

power, should be treated as within and the other, the private, as without the implied power of Congress, it was expressly held that the authority of Congress was to be ascertained by considering the bank as an entity possessing the rights and powers conferred upon it and that the lawful power to create the bank and give it the attributes which were deemed essential could not be rendered unavailing by detaching particular powers and considering them isolatedly and thus destroy the efficacy of the bank as a national instrument. The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of the opinion, that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature.' p. 864." (244 U. S. p. 420.)

Applying these principles, it follows that Congress was entitled in its discretion to establish the Federal Land Banks as means for the accomplishment of its end in providing financial aid to stimulate agricultural development in a systematic manner throughout the country. Having power to establish these banks, it was competent for Congress to provide that the Treasury should subscribe to their capital stock. The banks were lawfully created and the stock could be taken as a lawful investment of public funds.

And as an incident to the provision for financial aid for the stated purpose, Congress was entitled to provide officers and bureaus, registrars and appraisers, and it could require appraisements, the taking of securities and direct generally the method of handling and investing moneys received in the discharge of loans, as well as authorize the loans themselves.

The same principle sustains the validity of the provisions for the issue of Farm Loan Bonds. As Congress had the power to apply the public money through the investment in the capital stock of the Federal Land Banks, to be employed as prescribed, Congress also had the power to provide for the issue of Farm Loan Bonds for the same purpose. If Congress had the power to organize financial aid in order to stimulate agricultural development, and to use the borrowing power of the Government for this purpose, it could create an appropriate organ to raise the necessary moneys and it could prescribe the manner in which these moneys should be raised so as to adapt its action to the exigency with which it was competent to deal. Congress could provide for raising the money directly by borrowing through the Treasury in the usual manner if it chose to do so, or it could accomplish the same purpose through a fitting instrumentality of its creation. And, of course, it could prescribe the standards, requisites and conditions of the action it authorized and place the issue of the Farm Loan Bonds under the approval in each instance of the Federal Farm Loan Board, established in the Treasury Department, as prescribed in the Act.

THIRD. Congress had authority to create the Federal Land Banks as instrumentalities of the Government to act as depositaries of public moneys and as financial agents of the Government and to equip the banks thus established with power to issue Farm Loan Bonds for the described purposes.

The fact that Congress combined the exercise of two powers does not derogate from the exercise of either one. Congress not only had the authority to provide financial aid to promote the cultivation of the soil and to create an appropriate organization to that end, but Congress also had authority to provide for the creation of additional financial institutions to assist it in the fiscal operations of the Government.

The Federal Land Banks serve both purposes. That they serve either one is sufficient to sustain the validity of the legislation in question. The power of Congress to establish banks, as appropriate facilities to aid in the fiscal operations of the Federal government is beyond controversy (*M'Culloch v. Maryland, supra; Osborn v. Bank of the United States, supra; First National Bank v. Trust Company, supra*). The fact that a banking institution established by the Federal government may largely be engaged in private transactions incident to the banking business, that is, in receiving deposits from individuals, firms, and private corporations, and in making ordinary loans and discounts, through which it may derive the gains which justify it as a business enterprise, does not militate against the authority of Congress to incorporate it as a Federal agency, in view of the fact that the nature of its business is

such as to qualify it for service in the financial transactions of the Government. The particular grounds which justify the creation of a bank to furnish assistance to the Government were thus stated in *M'Culloch v. Maryland* (4 Wheat., pp. 407-409, 422-424):

"Although, among the enumerated powers of government we do not find the word 'bank' or 'incorporation,' we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation are entrusted to its government. * * * Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. * * *

"It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. * * *

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government.

That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government. . . .

But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. . . . But . . . to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. . . .

"After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land."

(See, also, Hamilton's Argument on the Constitutionality of the Bank of the United States, February 23, 1791; Story on the Constitution, secs. 1259-1271.)

The validity of the present National Bank system rests upon the same grounds. In *Farmers' & Mechanics' National Bank v. Dearing*, 91 U. S., 29, 33, it was said: "The national banks organized under the Act (of 1864) are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge." (See also *Mercantile National Bank v. New York*, 121 U. S., 138, 154; *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283; *Easton v. Iowa*, 188 U. S., 220, 229.)

In a general way, the facilities furnished by national banks may be described as those relating

(1) *To the receipt, transmission and disbursement of the public money.* (See *M'Culloch v. Maryland*, 4 Wheat., pp. 407, 408, 409.) It was said of the old Bank of the United States: "It is an immense machine, economically and beneficially applied to the fiscal transactions of the nation. * * * It is now become the functionary that collects, the depository that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away the millions that pass annually through the national treasury." (Mr. Justice Johnson, in *Osborn v. The Bank*, 9 Wheat., p. 872.)

(2) *To the exercise of the borrowing power.* "The bank has a direct relation to the power of borrowing money, because it is an usual, and, in sudden emergencies, an essential instrument, in

the obtaining of loans to the government. A nation is threatened with a war; large sums are wanted on a sudden to make the requisite preparations; taxes are laid for the purpose; but it requires time to obtain the benefit of them; anticipation is indispensable. If there be a bank, the supply can at once be had; if there be none, loans from individuals must be sought. The progress of these is often too slow for the exigency; in some situations they are not practicable at all. Frequently when they are, it is of great consequence to be able to anticipate the product of them by advances from the bank. * * * The legislative power of borrowing money, and of making all laws necessary and proper for carrying into execution that power, seems obviously competent to the appointment of the *organ*, through which the abilities and wills of individuals may be most efficaciously exerted for the accommodation of the government by loans." (Hamilton, "National Bank," February 23, 1791.)

(3) To the exercise of the power *to regulate the currency of the country* through the issue, under appropriate regulations, of national bank notes which pass from hand to hand as currency. (*Osborn v. The Bank*, 9 Wheat., pp. 864, 873; *Juilliard v. Greenman*, 110 U. S., p. 445; *Veazie Bank v. Fenno*, 8 Wall., p. 549.)

It cannot be said that the Federal Land Banks are to perform the last mentioned function, with respect to the currency, for while Farm Loan Bonds may be issued in small denominations, it would be far-fetched to consider them as intended to form part of the currency of the Nation. But although "the currency which it circulates" was

believed to make the Bank of the United States "a more fit instrument for the purposes of government than it could otherwise be" (*Osborn v. The Bank, supra*), the power of Congress to charter a bank was maintained, as was stated by Mr. Justice Gray, in *Juilliard v. Greenman, supra*, "chiefly upon the ground that it was an appropriate means for carrying on the money transactions of the government."

Despite the limited banking powers with which the Federal Land Banks are invested, they are nevertheless agencies for national service in connection with the fiscal operations of the Government.

The Act (following the similar language in relation to National Banks, United States Revised Statutes, sec. 5153) provides that all Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money (except receipts from customs) under the Secretary's regulations, and these banks may also be employed as financial agents of the Government, and must perform whatever reasonable duties may be required of them in these capacities. The Secretary of the Treasury is to take satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with these banks and for the faithful performance of their duties as financial agents. The Federal Land Banks although limited in banking privileges, are still facilities for the receipt, transmission, and payment of money. They are institutions organized to deal in money and thus are appropriate means for the conduct of transactions relating to the public money. As

banking organizations, they have the qualifications to render service as depositaries and financial agents. In this aspect, it cannot be considered as a determining feature that these banks are to make loans to cultivators of the soil on farm security, and not to merchants on commercial paper; or that they are not to accept deposits payable upon demand except from their own stockholders. The Federal Land Banks may borrow money, give security therefor, and pay interest thereon; they may receive deposits from their stockholders, payable upon demand; they may deposit their securities and their current funds subject to check with any member bank of the Federal Reserve System and receive interest; they must hold at least twenty-five per cent. of the capital for which stock is outstanding in the name of National Farm Loan Associations in quick assets, consisting of cash in their own vaults, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under the rules of the Federal Farm Loan Board; their farm loan bonds are a lawful investment for all fiduciary and trust funds (subject to the laws of the several States), and may be accepted as security for all public deposits. In short, the Federal Land Banks will be constantly, in the course of their authorized business, receiving and disbursing money and will thus have facilities available for governmental transactions.

It is not a question for the courts whether the Government has need of these additional facilities. That is a matter for Congress to decide if the facilities are of the kind which the Federal Government may properly use in the performance of its functions.

In addition to the facility afforded by the Federal Land Banks in the receipt, transmission, and payment of public money, they may be deemed to have relation to the exercise of the borrowing power, generally. One of the purposes set forth in the title of the Act is "to furnish a market for United States bonds." It is required that not less than five per cent. of the capital of these banks for which stock is outstanding in the name of National Farm Loan Associations shall be invested in United States Government bonds. Apart from this, the Federal Land Banks are expressly empowered to buy and sell United States Government bonds. Amortization and other payments on the principal of mortgage loans may be used for the purchase of United States Government bonds. The Farm Loan Bonds which these banks are authorized to issue may be secured by United States Government bonds and the latter may be substituted as such security for mortgages withdrawn from the Farm Loan Registrar.

The Federal Farm Loan Board would be at liberty, it would seem, to prescribe as a condition of its approval of any issue of these bonds to what extent the ordinary obligations of the Government should form the underlying security for such issue. It is also to be noted that the National Farm Loan Associations which may be organized in all parts of the country may issue certificates against deposits of current funds, bearing interest as provided, which are convertible into farm loan bonds when presented at the Federal Land Bank of the district. The deposits which may thus be received by these subsidiary associations are to be forthwith transmitted to the Federal Land Bank of the district and may be invested by

it in the purchase of farm loan bonds issued by a Federal Land Bank and secured as above stated.

While the Federal Land Banks have been in existence but a short time, they have already been called upon to serve the Government as fiscal agents in a matter of no little importance. When, in the summer of 1918, it was necessary to do everything possible to increase crops, the President set aside \$5,000,000, out of the \$100,000,000 of war funds placed under his control, for the purpose of making seed grain loans to farmers in drought-stricken sections. The Federal Land Banks of Wichita, St. Paul and Spokane were designated as financial agents of the Government for this purpose, and they made upwards of 15,000 of these seed grain loans. The Federal Land Banks acted in this matter without compensation, fulfilling the duty imposed upon them by virtue of their organization. These facts appear in the Bill (Transcript of Record, p. 10).

We know of no authority in the courts to measure the extent to which these new fiscal agencies either are needed or will be used. They are engaged in fiscal operations and they are fitted to act as fiscal agents for the Government and Congress is the sole judge as to whether or not they should have been established.

Congress, we submit, can make as many fiscal agents as it chooses. It can establish these where it pleases. It can give them extended or limited banking powers. It can prescribe the business in which they shall be engaged. It can permit them to engage in private business. In short, Congress is the judge of the necessity of their establishment and of the scope of their operations.

The only question for the Court, when Congress states that it has organized a financial institution as an aid to its fiscal operations, is whether in any conceivable manner the institution can serve the prescribed purposes. If it can, we submit that this is an end of the inquiry so far as the Court is concerned. The remaining questions are for the legislative discretion.

In the present case, Congress has specifically declared that it has created these banks to "furnish a market for United States bonds, to create Government depositaries and financial agents for the United States." It makes no difference how limited the banking powers are; these institutions are financial institutions which deal in money and, being equipped for this purpose, they are equipped to serve the Government. Congress says that they are created to serve the Government; in fact, they have already served the Government in a notable way. In this view, the validity of their creation is not open to question.

Having the power to create these Federal Land Banks, Congress also had the power to authorize them to issue bonds and generally to transact the business in which they were engaged under the terms of the Act.

While the motive which led Congress to create these banks was an entirely proper one, and while it is submitted that they aid in the performance of a governmental function in providing financial aid in order to promote the cultivation of the soil and the securing of a proper food supply, they also stand before the Court as fiscal agents and if it were possible to take any other view of ulterior purposes, the action of Congress could not be questioned upon this ground (*Mc-*

Cray v. United States, 195 U. S., p. 56; *Hamilton, Collector, v. Kentucky Distilleries & Warehouse Company*, decided December 15, 1919).

FOURTH. Congress had power to protect from taxation the Federal Land Banks thus created and the Farm Loan Bonds thus issued under its authority.

As we said at the outset, the question of the validity of the tax exemption feature of the Act is not an independent one. This question turns upon the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. It cannot be doubted that Congress can protect its corporations validly created, and the securities validly issued by such corporations under its authority, from tax levies.

The States are without authority to tax the operations of the Federal Government, and hence cannot tax what may properly be deemed to be the instrumentalities of that Government. In order to determine the appropriate application of this principle, the leading decisions may be briefly reviewed.

In *M'Culloch v. Maryland* (*supra*), the State of Maryland sought to enforce a tax upon a branch of the Bank of the United States established within that State. In holding the tax to be invalid, Chief Justice Marshall said (4 Wheat., p. 436):

"The result is a conviction that the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional

laws enacted by Congress to carry into execution the powers vested in the general government. * * *

"This opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

It was argued in *Osborn v. Bank (supra)*, that the distinction should be drawn between the trading of the bank with individuals for its own advantage and its agency for the public, and hence that the State of Ohio could tax its business. In answer to this argument, Chief Justice Marshall said (9 Wheat., pp. 861-862):

"Why is it that Congress can incorporate or create a bank? * * * It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of government. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter? * * * Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute. * * *

"This distinction, then, has no real existence. To tax its faculties, its trade, and occu-

pation, is to tax the bank itself. To destroy or preserve the one, is to destroy or preserve the other."

Upon the same principle, it was held in *Weston v. City Council of Charleston*, 2 Pet., 449, that the stock (that is, the bonds) of the United States could not be taxed by the States. The tax was found to be "a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution" (See also *Bank of Commerce v. New York City*, 2 Black, 620).

A similar ruling was made in *Bank v. Supervisors* (7 Wall., 26), as to United States notes issued under the Loan and Currency Acts of 1862 and 1863. There, it was insisted that the notes were issued as money, and as this was their controlling quality, they were subject to taxation like coin issued under the same authority. In such a case it was recognized that Congress would have a discretion to determine whether State taxation of such a subject would injuriously affect the functions of the Federal Government. Chief Justice Chase said:

"It cannot be said, as we have already intimated, that the same inconveniences as would arise from the taxation of bonds and other interest-bearing obligations of the government, would attend the taxation of notes issued for circulation as money. But we cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be enhanced by exemp-

tion from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption.

"There remains, then, only this question, Has Congress exercised the power of exemption?

"A careful examination of the acts under which they were issued, has left no doubt in our minds upon that point."

In *Thomson v. Pacific Railroad* (9 Wall., 579), the question arose whether the *property* of the railway company, a *State corporation*, which was "entitled to certain benefits, and subject to certain duties under the legislation of Congress" was subject to a State tax. The Court held that it was. The Court thought there was "a clear distinction between the means employed by the government and the property of agents employed by the government," saying: "Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means." (See, to the same effect, *National Bank v. Commonwealth*, 9 Wall., p. 362.) And in the *Thomson* case, it was deemed "safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection" (*id.*, p. 591).

In *Railroad Company v. Peniston*, 18 Wall., 5, a tax by the State upon the real and personal property (as distinguished from its franchises) of the Union Pacific Railroad Company, a Fed-

eral corporation, was upheld. Mr. Justice Strong, with whom three Judges concurred, said (p. 36):

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Mr. Justice Swayne, concurring in the judgment (pp. 37, 38), thought that there was "no reason to doubt that it was the intention of Congress *not* to give the exemption claimed," adding:

"But I hold that the road is a National instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so. For some of the leading authorities in support of the principle involved in this view of the subject I refer to the *Chicago and Northwestern Railway v. Fuller* (17 Wall., 560), decided by this Court a short time ago."

(See also *California v. Pacific R. R. Co.*, 127 U. S., p. 41.)

Adopting the same view, it was said by Mr. Justice Brewer, in delivering the opinion of the Court in *Reagan v. Mercantile Trust Co.*, 154 U. S., pp. 416, 417, as to the Texas and Pacific

Railway, a Federal corporation, that "conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it," and it was concluded that the corporation was "as to business done wholly within the State, subject to the control of the State in all matters of taxation, rates, and other police regulations."

The result of the decisions was thus stated in *Central Pacific Railroad Co. v. California*, 162 U. S., p. 125:

"It may be regarded as firmly settled that although corporations may be agents of the United States, their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Co. v. Peniston*. *Van Brocklin v. Tennessee*, 117 U. S., 151, 177.

"Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question. Congress did not see fit to do so here, and unless we are prepared to overrule a long line of well considered decisions the case comes within the rule therein laid down."

With respect to national banks, it has been held that their *personal assets* are exempt from State taxation. In *Rosenblatt v. Johnston*, 104 U. S., 462, this conclusion was reached with respect to the personal property of an insolvent national bank which was in the hands of a receiver appointed by the Comptroller of the Currency under section 5234 of the Revised Statutes. The decision

was placed upon the ground that the property in legal contemplation still belonged to the bank; that if the shares had any value they were taxable in the hands of the holders, under section 5219 of the Revised Statutes, but that the property in the hands of the receiver was "exempt to the same extent as it was before his appointment."

By reason of the policy and purpose of the National Bank Act it was said in *Mercantile Bank v. New York*, 121 U. S., p. 154, that "neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States." It was added that it "was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by law." And in *Talbott v. Silver Bow County*, 139 U. S., p. 440, it was said: "That shares of stock in a national bank are not subject to taxation without the consent of Congress is conceded." (See *People v. Weaver*, 100 U. S., p. 543; *Davis v. Elmira Savings Bank*, 161 U. S., p. 283.)

As to national bank notes, Congress expressly provided by the act passed in 1894 (28 Stat., 278, c. 281) that the "circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver or other coin," should be "subject to tax-

ation as money on hand or on deposit under the laws of any State or Territory."

In *Owensboro National Bank v. Owensboro*, 173 U. S., 664, a suit brought to restrain the collection of alleged "franchise" taxes under an act of Kentucky, the Court said (through Mr. Justice White)—after referring to the principles established by the previous decisions:

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, *were it not for the permissive legislation of Congress.*

"Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year, act of June 3, 1864, c. 106, 13 Stat., 99, power was granted to the States, not to tax the banks, their franchises, or property, but to tax the shares of stock in the names of the shareholders.

"This section, then, of the Revised Statutes, *is the measure of the power of the State to tax national banks, their property or their franchises.* By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void."

(See also *First National Bank v. Albright*, 208 U. S., pp. 552, 553).

In *Clement National Bank v. Vermont*, 231 U. S., p. 135, it was held that with respect to the

taxation of *depositors' credits*, the Federal statute does not prescribe a rule, and the property being normally subject to the State's taxing power, there was no warrant for implying a restriction which would extend beyond the requirements of protection from the prejudicial effect of such exactions as would be unjustly discriminatory.

The rule with respect to the taxation of Federal instrumentalities has had recent application in *Farmers Bank v. Minnesota*, 232 U. S., 516, holding that a State may not tax bonds issued by a municipality of a territory, as such a tax was one upon the operations of the Government and not in any sense a tax upon the property of the municipality; and that "to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." (*id.*, p. 526.) And in *Choctaw & Gulf R. R. Co. v. Harrison*, 235 U. S., 292, a tax upon the gross sales of coal from mines which the railroad company had leased from Indians, was held to be invalid, as it was a tax upon an instrumentality through which the United States was performing its duty to the Indians. (See also *Indian Territory Oil Co. v. Oklahoma*, 240 U. S., 522; *Bank of California v. Richardson*, 248 U. S., 476.)

In the present case, Congress has provided explicitly that "*every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or*

taken by said bank or association under the provisions of section eleven and section thirteen of this Act."

It is also provided that "*first mortgages*" executed to the Federal Land Bank, and "*farm loan bonds* issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

In view of these provisions, it is not necessary to discuss the question whether, or in what cases, there must be an explicit declaration by Congress in order to create an exemption from State taxation, either of the property held by Federal corporations, or of the shares or obligations issued by them. (See *Bank v. Supervisors*, 7 Wall., 26; *Thomson v. Pacific Railroad*, 9 Wall., p. 591; *Railroad Co. v. Peniston*, 18 Wall., pp. 37, 38; *Reagan v. Mercantile Trust Co.*, 154 U. S., pp. 416, 417.) Nor is it essential to consider to what extent action by Congress may be held, as it has been said, to permit State taxation. (See *Mercantile Bank v. New York*, 121 U. S., p. 154; *Owensboro National Bank v. Owensboro*, 173 U. S., p. 664.) Here, the exemption is given expressly.

If the subject of the exemptions is deemed to be so intimately and unquestionably related to the operations of the Federal agency as to be inherently exempt, the action of Congress is merely declaratory. And, if the case is one in which Congress can be said to have discretion, certainly Congress has exercised it. From every point of view, the exemption is a valid one. Congress has complete power to protect the Federal Land Banks as Federal corporations, and the Farm

Loan Bonds as securities issued by these corporations under the authority of Congress, from State taxation.

With respect to the exemption of the Farm Loan Bonds issued by the Federal Land Banks from Federal taxation, it is sufficient to say that Congress pledges this immunity and to the extent that these bonds are accepted and paid for in reliance upon this stipulation it would be a gross violation of faith to repudiate it. Further, this provision of the Act accepted by the taking and paying for the bonds, constitutes an agreement supported by consideration which would be valid and binding. In view of the broad authority of Congress in matters of taxation, it is submitted that Congress has ample power to make this provision for exemption—a power similar to that which has been recognized as belonging to the States. (See *Home v. Rouse*, 8 Wall., 430; *Farlington v. Tennessee*, 95 U. S., 679.)

As was said by the Supreme Court of the United States in the *Sinking Fund Cases*, 99 U. S., pp. 718, 719: "The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. . . . The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be

if the repudiator had been a State or a municipality or a citizen." So, referring to legislation with respect to certain railroads, the Supreme Court said in *United States v. Central Pacific R. R. Co.*, 118 U. S., p. 238: "These sections" (referring to the applicable Act of Congress) "taken together, constitute the contract between the United States and the appellee. . . . This contract is binding on the United States, and they cannot, without the consent of the company, change its terms by any subsequent legislation. *Sinking Fund Cases, ubi supra.*"

Relying upon the immunity from taxation expressly conferred by Congress, and the validity of the securities, investors have purchased the Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board to the extent of over \$150,000,000. The appellant assails these existing securities. The attack cannot be sustained by doubts, for mere doubts must be resolved in favor of the validity of Congressional action. It is incumbent in a challenge of this most serious character for the appellant to establish its contention by reasoning so conclusive as to admit of no reply. Instead of sustaining this burden, the argument for the appellant runs counter to principles that have been established since the days of Marshall and to a weight of opinion in and out of Congress which is sufficiently indicated by the fact that three and a half years have elapsed since the passage of the Act, that Congress, in pursuance of its pledge, has repeatedly in Income Tax Acts exempted the Farm Loan Bonds, and that the States throughout the country have recognized the exemption from local taxation.

Under the accepted principles of constitutional construction we submit that the appellant's contention is inadmissible.

The decree of the District Court dismissing the bill should be affirmed.

CHARLES E. HUGHES,
Counsel for Federal Land Bank of
Wichita, Kansas, Appellee.

OCT 11 1920

JAMES D. MAHER,

IN THE
Supreme Court of the United States.

October Term, 1920
No. 199

CHARLES E. SMITH,

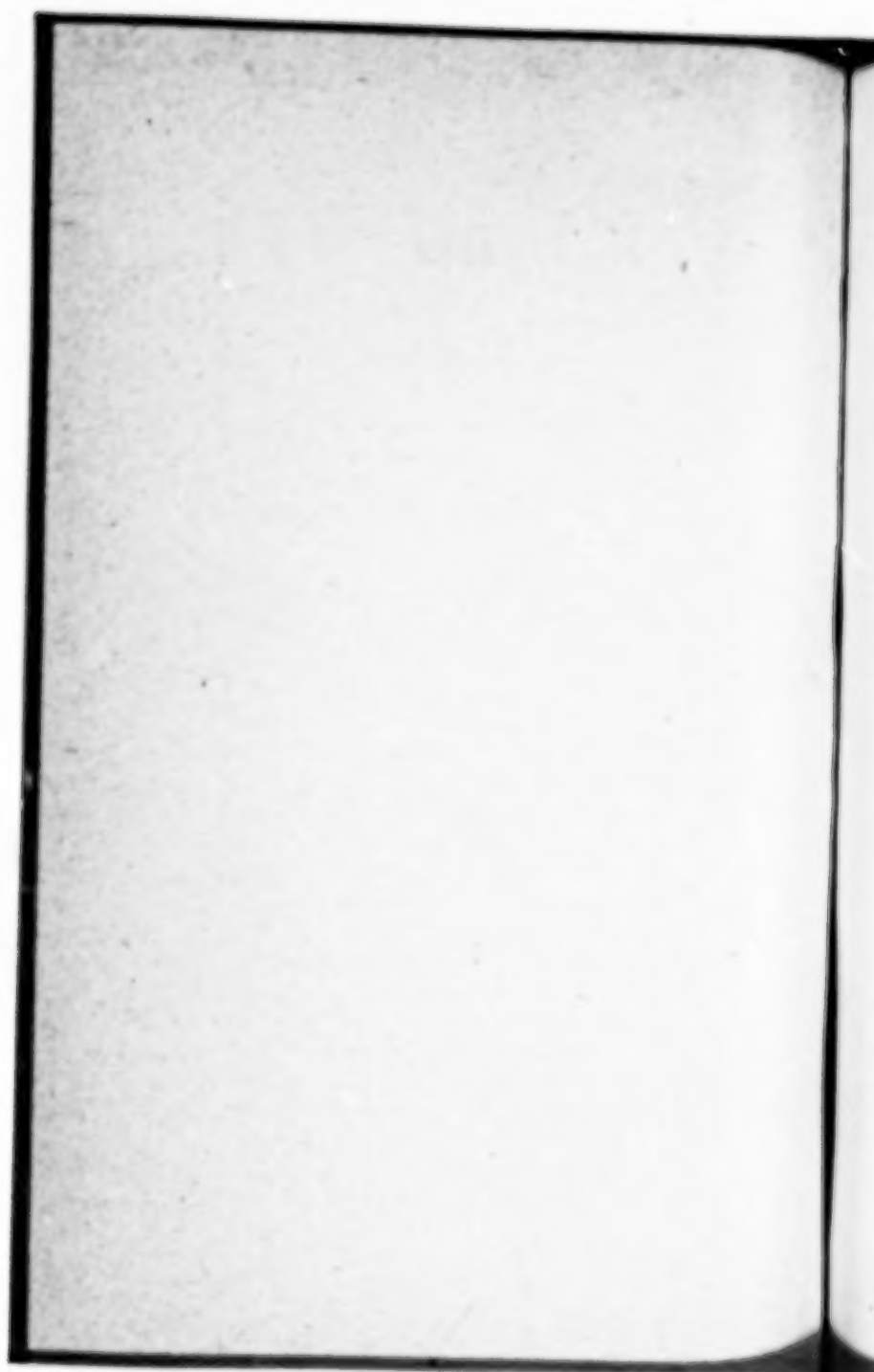
Appellant,

against

KANSAS CITY TITLE & TRUST COMPANY, FEDERAL
LAND BANK OF WICHITA, KANSAS, AND FIRST
JOINT STOCK LAND BANK OF CHICAGO, ILLINOIS,
Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEE,
FEDERAL LAND BANK OF WICHITA, KANSAS,
ON REARGUMENT.

CHARLES E. HUGHES,
Counsel for Appellee,
FEDERAL LAND BANK OF WICHITA, KANSAS.



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IN THE
Supreme Court of the United States,

OCTOBER TERM, 1920.

No. 199

CHARLES E. SMITH,
Appellant,

against

KANSAS CITY TITLE & TRUST COM-
PANY, FEDERAL LAND BANK OF
WICHITA, KANSAS, and FIRST
JOINT STOCK LAND BANK OF
CHICAGO, ILLINOIS,
Appellees.

**SUPPLEMENTAL BRIEF FOR APPELLEE,
FEDERAL LAND BANK OF WICHITA,
KANSAS, ON REARGUMENT.**

We assume it to be unnecessary to restate the proceedings below which resulted in a decree of the District Court dismissing the bill. The question involved is the constitutionality of the Federal Farm Loan Act which the bill assails in its entirety.

This brief is presented on behalf of the Federal Land Banks.

Analysis of the Federal Farm Loan Act.

The provisions of the Federal Farm Loan Act of July 17, 1916, c. 245 (39 Stat. 360) as amended by the Act of January 18, 1918, c. 9 (40 Stat. 431), so far as they relate to the Federal Land Banks and are pertinent to the questions here involved may be succinctly described as follows:

The Federal Farm Loan Board.

The Federal Land Banks are Federal corporations organized by the Federal Farm Loan Board (sec. 4). This Board consists of five members, including the Secretary of the Treasury and four members appointed by the President by and with the advice and consent of the Senate, one of whom is designated by the President as the Farm Loan Commissioner and is the active executive officer of the Board. It has general supervision of the Federal Farm Loan Bureau, which is established in the Treasury Department (sec. 3).

Organization of Federal Land Banks.

It was made the duty of the Federal Farm Loan Board to divide continental United States, excluding Alaska, into twelve districts and to establish a Federal Land Bank in each district. The mode of organization was prescribed as follows: The Federal Farm Loan Board was to appoint five directors, for the purpose of temporary management. These directors were to make an "organization certificate," on the filing of which the Federal Land Bank was to become a body corporate (sec. 4). Each Federal Land Bank must have, before beginning business, a subscribed

capital of not less than \$750,000. The capital stock was to be divided into shares of \$5 each and might be subscribed for and held by any individual, firm or corporation or by the Government of any State or of the United States. If within thirty days after the subscription books were opened any part of the minimum capital of \$750,000 remained unsubscribed, the Secretary of the Treasury was required to subscribe the remainder on behalf of the United States, and to pay for the shares out of any moneys in the Treasury not otherwise appropriated.

Thereafter, there were to be subscriptions for stock by cooperative associations, known as National Farm Loan Associations, in connection with mortgage loans (secs. 4, 5). The subscriptions for stock by these associations are to be to the amount of five percent of the loans and such stock is to be retired when the loans are paid off (sec. 7). The effect is that any profits made and distributed are to go against the loans.

Stock owned by the United States is not to receive dividends, but all other stock is to share in dividend distributions without preference. Each National Farm Loan Association and the Government of the United States are entitled to one vote for each share of stock and no other shareholder can vote (sec. 5).

National Farm Loan Associations.

National Farm Loan Associations are also Federal corporations which may be organized by persons desiring to borrow money on farm mortgage security. If the Federal Land Bank so recommends, the Federal Farm Loan Board may grant a charter to the applicants designating the terri-

tory in which such Association may make loans (sec. 7). Shares in these Associations are to be of the par value of \$5 each, and no persons but borrowers on farm land mortgages are to be shareholders; such borrowers are to take stock to the amount of five percent of their loans (sec. 8). Whenever any Association desires to secure for a member a loan on first mortgage from the Federal Land Bank of its district, it must subscribe for capital stock of that Land Bank to the amount of five percent of the loan. This stock must be paid off and retired upon full payment of the mortgage loan, and whenever it is retired the Association is to retire the corresponding shares of its stock (sec. 7). Among the described powers of National Farm Loan Associations may be noted the power "to indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district"; and also the power "to issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of \$25 or any multiple thereof." Such deposits, when received, are to be forthwith transmitted to such Land Bank and be invested by it in the purchase of farm loan bonds issued by a Federal Land Bank or in first mortgages as defined by the Act (sec. 11).

Permanent Organization of Federal Land Banks.

After subscriptions to stock in any Federal Land Bank by National Farm Loan Associations reach the sum of \$100,000, the permanent officers

and directors of the Land Bank are to take over its management from the temporary officers and directors first designated. The Board of Directors thus constituted is to consist of nine members, six of whom are to be chosen by National Farm Loan Associations, and the remaining three directors are to be appointed by the Federal Farm Loan Board (sec. 4). After subscriptions to the capital stock of any Land Bank by National Farm Loan Associations amount to \$750,000, the bank must apply semi-annually to the payment and retirement of the shares which were issued upon subscriptions to the original capital twenty-five percent of all sums thereafter subscribed to capital stock until the original capital stock is retired at par. At least twenty-five percent of that part of the capital of any Federal Land Bank of which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets and may consist of cash in the vaults of the Land Bank, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under rules of the Federal Farm Loan Board, provided that not less than five percent of such capital shall be invested in United States Government bonds (sec. 5).

Amendment of Act providing for continuance of temporary organization of Federal Land Banks.

By the amendment of January 18, 1918 (40 Stat. 431), the Secretary of the Treasury was authorized in his discretion, upon the request of the Federal Farm Loan Board from time to time during the fiscal years ending June 30, 1918, and June 30, 1919, respectively, to use any funds in the Treasury not otherwise appropriated in the purchase at

par and accrued interest from any Federal Land Bank of Farm Loan Bonds issued by such bank. Such purchases were not to exceed \$100,000,000 in either of the fiscal years specified.

It was then provided that the temporary organization of any Federal Land Bank as provided in section 4 of the Federal Farm Loan Act should be continued so long as any Farm Loan Bonds purchased from it under the provisions of the amendment should be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations should equal the amount of stock held in such bank by the Government of the United States.

Restriction upon mortgage loans made by Federal Land Banks.

The mortgage loans by the Federal Land Banks are carefully restricted so as to be made only to actual cultivators of the soil and thus to promote agricultural development in a systematic manner throughout the country. They can be made only for the purpose of purchasing farm lands and equipment, and for improvements, or for liquidating existing indebtedness as stated. They are to be made to cultivators of the land mortgaged in an amount not above \$10,000 and at a rate of interest not exceeding six percent per annum. The interest rate is to be the rate in the last series of farm loan bonds issued by the Land Bank making the loan with not more than one per cent added to cover administration expenses and profits (sec. 12).

General powers of Federal Land Banks.

Each Federal Land Bank is empowered to issue,

subject to the approval of the Federal Farm Loan Board, and to buy and sell farm loan bonds authorized in the Act; to invest its funds in the purchase of qualified first mortgages on farm lands within its district; to hypothecate mortgages with the Farm Loan Registrar of the district (an officer appointed by the Federal Farm Loan Board) as security for farm loan bonds; to acquire and dispose of property necessary or convenient for the transaction of its business, and parcels of land acquired in satisfaction of debts or at judicial sales; to deposit its securities and its current funds subject to check with any member bank of the Federal Reserve System and to receive interest thereon; to accept deposits of securities or of current funds from national Farm Loan Associations holding its shares but to pay no interest on such deposits; to borrow money, to give security therefor, and to pay interest thereon; to buy and sell United States bonds; and to charge applicants for loans, under regulations of the Federal Farm Loan Board, reasonable fees not exceeding actual cost of appraisal and determination of title (sec. 13). The Act provides that no Federal Land Bank shall have power "to accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized" by the Act; to loan on first mortgage except through National Farm Loan Associations or through described agents employed in localities where Associations have not been formed; to accept any mortgages on real estate except first mortgages made as provided in the Act and those taken as additional security for existing loans; to issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus,

or to receive from any National Farm Loan Association additional mortgages when the unpaid principal upon existing mortgages received therefrom exceeds twenty times the amount of its capital stock owned by such Association; or to demand or receive any commission or charge not specifically authorized in the Act (sec. 14). The by-laws of Federal Land Banks, regulating the conduct of business, are subject to the supervision of the Federal Farm Loan Board (sec. 4).

Every Federal Land Bank must carry semi-annually to reserve twenty-five percent of its net earnings until the reserve account shall show a credit balance equal to twenty percent of the outstanding capital stock of the bank, and thereafter is to carry to reserve account five percent of its net earnings annually. The reserves of Federal Land Banks are to be invested in accordance with the rules prescribed by the Federal Farm Loan Board (sec. 23). Upon default of any obligation, Federal Land Banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board for the purpose of liquidation. This Board may also appoint a Receiver of any National Farm Loan Association where such Association shall have been in default for a period of two years or its total amount of defaults, as specified, shall amount to at least \$150,000 in the Federal Land Bank district. The Receiver may take possession of the assets of such Associations or of Federal Land Banks and may in the course of liquidation sell all their real and personal property on such terms as the Federal Farm Loan Board or a court of competent jurisdiction may direct. No National Farm Loan Association or Federal Land Bank may go into voluntary liquidation without the consent of the Board (sec. 29).

Farm Loan Bonds.

Farm loan bonds may be issued by any Federal Land Bank with the approval of the Federal Farm Loan Board (sec. 18), in denominations of \$25, \$50, \$100, \$500, and \$1000, and are to run for specified minimum and maximum periods subject to payment and retirement at the option of the Land Bank at any time after five years from date of issue. Interest coupons are to be payable semi-annually and bonds are to be issued in series of not less than \$50,000, the amount and terms to be fixed by the Federal Farm Loan Board, and at a rate of interest not to exceed five percent per annum. The Secretary of the Treasury is authorized to prepare suitable bonds in such form, subject to the provisions of the Act, as the Federal Farm Loan Board may approve. The expenses of the preparation, custody and delivery of the bonds are to be paid by the Secretary of the Treasury out of any moneys not otherwise appropriated, and reimbursement is to be effected through proportionate assessments on farm land banks. The bonds may be exchanged into registered bonds of any amount and re-exchanged into coupon bonds at the option of the holder under rules prescribed by the Board (sec. 20).

On application by any Federal Land Bank to the Federal Farm Loan Board for approval of an issue of bonds, the Federal Land Bank must tender to the Farm Loan Registrar of the district as collateral security first mortgages on farm lands qualified under the Act, or United States Government bonds, not less in aggregate than the amount of the proposed issue. The Federal Farm Loan Board, upon investigation and appraisalment, may grant or reject the application in whole or in part (sec. 18).

Every Federal Land Bank issuing such bonds is to be primarily liable therefor, and is also to be liable, upon presentation of coupons, for interest payments due upon any farm loan bonds issued by other Federal Land Banks and remaining unpaid in consequence of their default; and every such bank is likewise to be liable for such portion of the principal of farm loan bonds issued by other Federal Land Banks as shall not be paid after their assets shall have been liquidated and distributed, provided that such losses either of interest or of principal shall be assessed by the Federal Farm Loan Board against solvent Land Banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding (sec. 21).

Every farm loan bond issued by a Federal Land Bank must contain on its face "a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or endorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal Land Banks are liable for the payment of each bond" (sec. 21). It is provided that farm loan bonds shall be "a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits." They may be bought and sold by any member bank of the Federal Reserve System, and any Federal Reserve Bank may buy and sell farm loan bonds to the same extent and on the same limitations as are

provided in the case of State, county, district and municipal bonds (sec. 27).

The Act provides for the amortization of loans, and all amortization or other payments on the principal of mortgages securing farm loan bonds are to constitute a trust fund in the hands of the Federal Land Bank to be applied (a) to pay off farm loan bonds issued by said bank as they mature; (b) to purchase at or below par farm loan bonds issued by said bank or by any other Federal Land Bank; (c) to loan on qualified first mortgages on farm lands within the bank district, and (d) to purchase United States Government bonds (sec. 22).

Federal Land Banks as depositaries and fiscal agents of the Government.

All Federal Land Banks, when designated for that purpose by the Secretary of the Treasury, are to be depositaries of public money, except receipts from customs, under regulations prescribed by the Secretary. They may also be employed as financial agents of the Government; and they must perform all such reasonable duties in these capacities as may be required of them. The Secretary of the Treasury must require from the banks thus designated satisfactory security by the deposit of United States bonds or otherwise for the faithful performance of their duties. No Government funds deposited with the banks under this provision are to be invested in mortgage loans or farm loan bonds (sec. 6).

The Secretary of the Treasury is also authorized in his discretion upon the request of the Federal Farm Loan Board to make deposits for the temporary use of any Federal Land Bank out of

any money in the Treasury not otherwise appropriated. The Federal Land Bank must issue therefor a certificate of indebtedness at a rate of interest not to exceed the current rate charged for other Government deposits to be secured by farm loan bonds or other collateral to the satisfaction of the Secretary of the Treasury. Any such certificate is to be redeemed and paid by the Land Bank at the discretion of the Secretary of the Treasury, and the aggregate of all sums so deposited is not to exceed \$6,000,000 at any one time (sec. 32).

Exemption from Taxation.

The Act further provides that every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate held, purchased, or taken by said Bank or Association under the provisions of the Act.

Farm Loan Bonds issued under the Act, as well as first mortgages executed to Federal Land Banks, are to "be deemed and held to be instrumentalities of the Government of the United States," and as such they and the income derived therefrom are to be exempt from Federal, State, municipal and local taxation. Real estate of such Banks or Associations is to remain subject to State, county or municipal taxes to the same extent, according to its value, as other real property is taxed (sec. 26).

The provisions of the Act relating to Joint Stock Land Banks are omitted, as these provisions will be presented by counsel for those banks.

The Organization of Federal Land Banks under the Act, the issue of Farm Loan Bonds and Activities of these Banks on behalf of the Government.

The bill as amended sets forth the facts. The continental United States excluding Alaska was divided, as provided in the Act, into twelve Federal Land Bank Districts, in each of which a Federal Land Bank has been established by the Federal Farm Loan Board (Transcript of Record, p. 3). Under the provisions of section 5 of the Act, the Secretary of the Treasury invested in the capital stock of these Federal Land Banks public funds to the amount of \$8,892,130. That is, of the \$9,000,000 required under the Act as the total initial capital of the twelve Federal Land Banks (\$750,000 each) the Government took stock to the amount of \$8,892,130. On July 1, 1919, the Secretary of the Treasury was still the holder, on behalf of the United States, of \$8,265,809 in par value (*id.* p. 9). On August 31, 1920, the capital stock held by the Government amounted to \$6,832,680.

These Federal Land Banks have taken from the owners of farm lands a large amount of mortgage notes and have made loans to the respective borrowers payable in installments extending over thirty-six years. After depositing these mortgages and notes with the Farm Land Registrar of the district (a federal official appointed by the Federal Farm Loan Board) the Federal Land Banks have issued Farm Loan Bonds and large amounts of these bonds have been sold to investors throughout the country (*id.* pp. 3, 4). Every Farm Loan Bond thus issued contains on its face a certificate, under section 21 of the Act, that it is

issued under the authority of the Federal Farm Loan Board, has the approval in form and issue of that Board, is legal and regular in all respects and that it is not taxable by national, state, municipal or local authority.

Up to September 30, 1919, the Federal Land Banks had issued Farm Loan bonds under the Act to the amount of \$285,600,000. It appears by the official statement of the Treasury Department, Federal Farm Loan Bureau, that to August 31, 1920, there were Farm Loan bonds authorized for issue by the Federal Land Banks amounting to \$331,350,000. Under Section 32 of the Act as amended on January 18, 1918, the Secretary of the Treasury purchased Farm Loan bonds issued by the Federal Land Banks to the amount of \$149,775,000, of which about \$135,000,000 were held in the Treasury of the United States on September 30, 1919. It is understood that on August 31, 1920, about \$175,000,000 of these bonds were in the Treasury. Over \$150,000,000 of the Farm Loan Bonds issued by the Federal Land Banks are held by the public.

4,000 National Farm Loan Associations have been chartered under the provisions of the Act by the Federal Farm Loan Board (sec. 7) and 2,000 of these Associations have begun the creation of reserves.

The Federal Land Banks on September 30, 1919, were the owners of United States bonds to the amount of \$4,230,805. On August 31, 1920, their holdings of United States bonds and securities amounted to \$7,583,227.77. The Federal Land Banks then had United States Government deposits to the amount of \$5,950,000.

During the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane were

designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President, at the request of the Secretary of Agriculture, having set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three Federal Land Banks mentioned have made upwards of 15,000 of these seed grain loans, aggregating upwards of \$4,500,000, and are now engaged in collecting these loans, all of which were secured by crop liens. The Federal Land Banks acted in this matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks but no compensation. (Transcript p. 10.)

ARGUMENT.

The Objects of the Act.

Congress has explicitly defined the objects of the Act in its title. These are:

(1) "To provide capital for agricultural development"; and, to this end, "to create standard forms of investment based upon farm mortgage" and "to equalize rates of interest upon farm loans."

(2) "To furnish a market for United States bonds."

(3) "To create Government depositaries and financial agents for the United States."

These were legitimate ends within the power of Congress, and Congress used appropriate means to attain these ends.

(1) Congress provided for the investment of public moneys in the capital stock of the Federal Land Banks to be employed in the making of loans to cultivators of the soil for the purpose of encouraging agricultural development throughout the country and provided for the borrowing of money through the issue of farm loan bonds for the same purpose.

(2) Congress provided that not less than five percent of the capital of Federal Land Banks, taken by the cooperative Farm Loan Associations through which loans are made, "shall be invested in United States Government bonds" (Farm Loan Act, Sec. 5).

(3) Congress empowered Federal Land Banks not only to issue Farm Loan bonds and to invest in farm mortgages, but also

"Fifth. To deposit its securities, and its current funds subject to check, with any member bank of the Federal Reserve System, and to receive interest on the same as may be agreed.

"Sixth. To accept deposits of securities or of current funds from National farm loan associations holding its shares, but to pay no interest on such deposits.

"Seventh. To borrow money, to give security therefor, and to pay interest thereon.

"Eighth. To buy and sell United States bonds." (*id.* Sec. 13).

(4) Congress provided that amortization and other payments on the principal of first mortgages held by the Federal officer, known as the Farm Loan Registrar, should constitute a trust fund to be applied or employed to pay off or purchase farm loan bonds, or to loan on security of farm lands, or "to purchase United States Government bonds" (*id.* Sec. 22).

(5) Congress further provided that the Land Banks should be the depositaries of public money except receipts from customs, when designated by the Secretary of the Treasury (*id.* Sec. 6).

(6) Congress further provided that the Land Banks "may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them" (*id.* Sec. 6).

(7) Congress declared that Farm Loan bonds issued under the Act "shall be deemed and held to be instrumentalities of the Government of the United States" (*id.* Sec. 26).

As we said in our brief on the former argument, and this is a sufficient comment upon the remarks of appellant's counsel,—

"The fact that Congress combined the exercise of two powers does not derogate from the exercise of either one. Congress not only had the authority to provide financial aid to promote the cultivation of the soil and to create an appropriate organization to that end, Congress also had authority to provide for the creation of additional financial institutions to assist it in the fiscal operations of the government. The Federal Land Banks served both purposes. That they serve either one is sufficient to sustain the validity of the legislation in question." (p. 59)

It is a fundamental principle invariably recognized that the Court will not assume to restrain the exercise of the lawful power of Congress upon the ground that Congress has had a wrongful motive or purpose. A contrary doctrine would disrupt the Government. In an extreme case of the exercise of the taxing power, this Court strongly stated the principle, as follows:

"Whilst, as a result of our written constitution, it is axiomatic that the judicial department of the government is charged with the solemn duty of enforcing the Constitution, and therefore in cases properly presented, of determining whether a given manifestation of authority has exceeded the power conferred by that instrument, no instance is afforded from the foundation of the government where

an act, which was within a power conferred, was declared to be repugnant to the Constitution, because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust. To announce such a principle would amount to declaring that in our constitutional system the judiciary was not only charged with the duty of upholding the Constitution but also with the responsibility of correcting every possible abuse arising from the exercise by the other departments of their conceded authority. So to hold would be to overthrow the entire distinction between the legislative, judicial and executive departments of the government, upon which our system is founded, and would be a mere act of judicial usurpation. * * * This, when reduced to its last analysis, comes to this, that, because a particular department of the government may exert its lawful powers with the object or motive of reaching an end not justified, therefore it becomes the duty of the judiciary to restrain the exercise of a lawful power wherever it seems to the judicial mind that such lawful power has been abused. But this reduces itself to the contention that, under our constitutional system, the abuse by one department of the government of its lawful powers is to be corrected by the abuse of its powers by another department.

"The proposition, if sustained, would destroy all distinction between the powers of the respective departments of the government, would put an end to that confidence and respect for each other which it was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions."

McCray v. United States, 195 U. S. 27, 53-55.

Hamilton v. Kentucky Distilleries and Warehouse Co., 251 U. S. 146, 161.

We may therefore dismiss so much of the argument of appellant's counsel as is devoted to considerations of *policy*, and the references to statements and arguments opposing the proffer of governmental aid for agricultural development. It would be a simple matter to present the other side of this question and to cite the opinions of qualified statesmen in its support. But the forum for such a debate is to be found in Congress; there is no room for controversy here. The protection of food and the conservation of agricultural interests are obviously matters of primary national concern, and the importance of providing the necessary financial aid, and the organization of credit, to promote the production of food is apparent, we think, to all close students of the subject. The selection of means, within the range of constitutional authority, is a legislative question. So far as the matter of policy is concerned, Congress, in the exercise of its prerogative, has settled it. It is not open here to question the wisdom of that policy. In this Court the sole question is one of *power*. The principle is thus stated in the *Legal Tender Cases*, 12 Wall. 457, 539:

"Before we can hold the legal tender acts unconstitutional, we must be convinced they were not appropriate means, or means conducive to the execution of any or all of the powers of Congress, or of the government, not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited."

United States v. Fisher, 2 Cranch 358.

M'Culloch v. Maryland, 4 Wheat. 316, 421.

Juilliard v. Greenman, 110 U. S. 421, 440-441.

We submit—

I. That Congress has power to use the public moneys, and to provide for the borrowing of money, to aid in agricultural development throughout the country in accordance with a systematic and general plan to promote the cultivation of the soil, involving the application of money through loans or otherwise, and that Congress having this power could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose;

II. That Congress has the power to judge for itself what fiscal agencies the Government needs and that its decision of that question is not open to judicial review; that Congress may create in its discretion, as it has created in this instance, moneyed institutions equipped to serve as fiscal agents of the Government and to provide a market, as stated in the Act, for United States bonds.

The Federal Land Banks are lawfully created agencies of the United States in that (a) they are the means for the application of public moneys for a proper purpose; (b) they are facilities organized for the purpose of supplying financial aid, through credits on a general plan, which it is competent for the Government directly to supply and to organize instrumentalities to supply; (c) they are constituted fiscal agents of the Government and are bound to perform all reasonable duties imposed upon them as such agents; and (d) they aid in the exercise of the borrowing power by the provisions for investment and dealing in United States bonds.

Each one of the purposes stated, we conceive, would be alone sufficient to sustain the Act. *The Federal Land Banks, from their inception to their winding up, are nothing but financial institutions constituting Federal instrumentalities whose main purpose is to perform governmental functions.* Congress is the judge of the need for these instrumentalities and has measured that need.

III. That Congress may protect the securities created under its legislation from impairment or destruction by making them exempt from taxation.

FIRST: Congress had power to use the public money, and to provide for the borrowing of money to aid in agricultural development throughout the country in accordance with the systematic and general plan to promote the cultivation of the soil, involving the application of money through loans or otherwise. And Congress, having this power, could exercise it by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

The initial question, then, is (1) as to the *end* to which Congress may provide for the use of money, and (2) as to the *means* for the attainment of this end.

(1) Congress had power directly to use the public moneys for the purpose of stimulating agricultural development. Congress was not limited to the use of public moneys by outright appropriations, but having that authority, could create a revolving fund to be used through loans. The purpose thus subserved through the provisions of the Act was a public purpose.

At the outset the Act contemplated that the entire capital of the Federal Land Banks might be supplied by the Federal Government. In fact, in accordance with the Act, the Government established the twelve Federal Land Banks (Farm Loan Act, Sec. 4) and, with the exception of a trifling amount, did provide the entire initial capital of all these banks, that is, \$8,892,130 out of \$9,000,000 (Complaint, Transcript p. 9.) The Federal Farm Loan Board, composed of the Secretary of the Treasury and the appointees of the President, not only has continuously broad powers of control

over the operations of these Federal Land Banks, but at the outset that Board appointed all the directors of each bank and these directors chose from their number the officers of the bank and employed such attorneys, assistants and other employees as were necessary, subject to the approval of the Federal Farm Loan Board (sec. 4). The Act contemplated that the temporary organization of the Federal Land Banks should yield to a permanent organization consisting in the case of each bank of a board of directors of nine members, three of whom are to be appointed by the Federal Farm Loan Board. But by the amendment of January 18, 1918 (40 Stat. 431), the temporary organization is to be continued indefinitely, that is, it is to continue in the case of any Federal Land Bank so long as any Farm Loan Bonds issued by that bank are held by the Treasury of the United States. The Government holds \$175,000,000 of these bonds, and it may hold these bonds for a long time to come. (Transcript, p. 9.) Pursuant to the Act, the Federal Farm Loan Board has appointed a Farm Loan Registrar in each Land Bank District and also Land Bank Appraisers and Examiners. These appointees are public officers (sec. 3), and they and their successors are to perform their prescribed official functions as long as the Federal Land Banks exist. The Federal Land Banks started as incorporated bureaus of the Government, and up to the present time each of them has been, and for an indefinite time will be, directly and completely managed by those selected and controlled by Federal officers.

The moneys at first available for loans were those supplied directly by the Treasury through its investment of the public funds in the capital stock of the Federal Land Banks, and the addi-

tional moneys used for the same purpose have been obtained by borrowing money on Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board, which controls the issue and terms of these bonds. It is in this manner that all the outstanding Farm Loan Bonds issued by the Federal Land Banks have been placed in the hands of investors.

We do not find that appellant's counsel meets the point that Congress has power directly to appropriate the public moneys in support of agriculture, but rather their argument is directed to the *means* which have been adopted by Congress, a matter which we shall later discuss. Of course, it is beside the mark to argue from the grounds taken in the debates in Congress to support the Act as if these should be taken as exclusive or as if the purpose here is to define their scope. Congress has passed the Act, and before it can be nullified it must appear that in no aspect of Federal power, or of all Federal powers, had Congress the authority to pass it.

It is, then, pertinent to observe that all that is done by the Federal Land Banks, the instrumentalities created by Congress and actually under Government control, Congress could have done directly by direct appropriations of money loaned through Federal officers. Congress could have raised the money either by taxes or by the exercise of the borrowing power. In fact, Congress provided through investment in the capital stock the initial moneys and in fact raised the additional moneys needed through the action of its officers in borrowing upon the securities which it defined and had issued by the banks under the control of the Federal Farm Loan Board.

We may at once meet the contention which the appellant's counsel bases on the decision in *Kansas v. Colorado*, 206 U. S. 46.

The Farm Loan Act deals with pecuniary aid alone, that is, it is concerned only with the application of money.

There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over the lands within their borders. Thus, the case of *Kansas v. Colorado* is not at all in point. There is an obvious distinction between the provision for financial aid, which is within the power of Congress as expressly conferred and as understood from the foundation of the Government, and the conduct of activities and the management of concerns within the State which lie outside the power of Congress.

The case of *Kansas v. Colorado* was an original suit brought to restrain Colorado from diverting the water of the Arkansas River for the irrigation of lands in Colorado and thus preventing, as was alleged, the natural and customary flow of the river into Kansas. The United States filed a petition for intervention, asserting the right to control the waters of the river to aid in the reclamation of arid lands. The contention was that "the determination of the rights of the two states *inter sese* in regard to the flow of waters in the Arkansas River" was "*subordinate to a superior right to control the whole system of the reclamation of arid lands.*" It was recognized in the opinion of Mr. Justice Brewer that the National Government

had full power to dispose of and make all needful rules and regulations respecting its own property, but the power over its own property did not embrace a grant to Congress of legislative control over the States. Appreciating this, the Government brought forward the doctrine of "inherent power" as giving to Congress the broad control asserted over the whole subject of reclamation of arid lands. The contention involved the subordination of all proceedings with respect to the *actual conduct* of that reclamation to such as might be provided by the legislation of Congress.

In denying the doctrine of inherent power as asserted, the Court did not in any way limit the familiar scope of the power which the Constitution actually confers. The present question was in no way involved. Here there is simply the extension of *financial aid*. No one can get it except under the conditions stated, which merely assure systematic aid to promote cultivation of the soil throughout the country. There is no provision for the conduct of agricultural activities and no interference whatever with any right reserved to the States.

The questions then are (a) Is the purpose a public one? And, (b) If it is a public purpose, upon what ground can the power to apply money for that purpose be denied to Congress?

**The purposes in view are public, not private;
national, not local.**

(a) Much is said in the argument of appellant's counsel in relation to *private* purposes, and *private* institutions. The Federal Land Banks certainly were not organized as *private* institutions;

they were organized and were, and still are, directly controlled and managed by appointees of the Government. They have not *become* private institutions and considering the public ends they have served, now serve and always will serve, they never will be *private* institutions. It may here be noted that, aside from the Government, no shareholder is entitled to vote except the co-operative national farm loan associations (Sec. 5), and the stock taken by these associations in connection with the loans which they obtain for their members, that is, stock to the amount of five percent of each loan, is retired when the loan is paid (Sec. 7). Whatever profit may go through dividends to these shareholders as borrowers in effect goes against the loans.

The argument that the purpose of the establishment of the Federal Land Banks is a private purpose will not, it is submitted, bear examination. Rather we conceive this purpose to be one of the most important public purposes to which Congress has ever provided for the application of money.

It will hardly be disputed that the agricultural interests of the country, broadly considered, are of National and not merely of State concern. Any view that would treat the food supply of the people as not a matter directly related to the common defense and general welfare of the United States would be so narrow as to be quite inadmissible. The deliberate judgment of Congress is shown in the wide range of its departmental appropriations. The objection to the validity of the action of Congress in the present case, so far as it relates to the provision for the use of money (as distinguished from the actual conduct of agricultural activities within the States), must rest,

it would seem, not upon the fact that the provision is in aid of the agricultural interests of the United States but upon the ground that it is designed to provide loans to owners of farm lands. The objection, then, is found to be a single one—that the purpose is private because of the benefit to individual cultivators of the soil.

It is, of course, a fundamental proposition that taxation must be for a public purpose. On this principle, State legislation authorizing municipalities to issue bonds in aid of private enterprises has been declared in certain cases to be invalid. (See *Loan Association v. Topeka*, 20 Wall., 655; *Parkersburg v. Brown*, 106 U. S., 487; *Cole v. LaGrange*, 113 U. S., 1.) It may also be assumed that the provision conferring upon Congress the power to lay taxes, and hence the power to appropriate the public money to “provide for the common defence and general welfare of the United States”, cannot be deemed to confer authority to do either for a purpose essentially private. But this familiar doctrine does not reach this case.

Just as well established is the principle that a purpose is not essentially a private one from the constitutional standpoint simply because private individuals may secure direct benefits through its execution. When direct individual benefit is involved, the question must always be, on a fair analysis, whether that benefit constitutes the object or is merely incidental to the public advantage which it is competent for the legislature to secure. Great measures of an undoubted public nature and advantage often carry with them benefits to individuals, or to classes of persons, whose immediate gain does not obscure the relation of the measures to the general welfare. Thus, it is recognized that while irrigation and drainage plans,

which have become familiar subjects of legislation in many States, may directly benefit the owners of the property which is to be watered or drained, the scheme may still bear such a relation to the public welfare as to accord with the legal conception of a public use; and, in this view, legislation providing for the organization of irrigation and drainage districts in order to improve the property within them has been sustained. Thus, it was said by this Court in *Fallbrook Irrigation District v. Bradley*, 164 U. S., 112, 161, 164:

“To irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to the land owners, or even to any one section of the State. The fact that the use of the water is limited to the land owner is not therefore a fatal objection to this legislation. It is not essential that the entire community or even any considerable portion thereof should directly enjoy or participate in an improvement in order to constitute a public use. All land owners in the district have the right to a proportionate share of the water, and no one land owner is favored above his fellow in his right to the use of the water. It is not necessary, in order that the use should be public, that every resident in the district should have the right to the use of the water.

“* * * Taking all the facts into consideration, * * * we have no doubt that the irrigation of really arid lands is a public purpose, and the water thus used is put to a public use.”

In *Clark v. Nash*, 198 U. S. 361, the question was as to condemnation for an enlarged irrigation ditch. It was insisted by the plaintiffs in

error that the proposed use of the enlarged ditch across their land was not a public use. They argued "that no individual has the right to condemn land for the purpose of conveying water in ditches across his neighbor's land, for the purpose of irrigating his own land alone, even where there is, as in this case, a state statute permitting it". But the Court declined to sustain this contention, holding that the fact that the individual was to benefit was not necessarily controlling, and that the exigencies of soil and climate might properly be taken into consideration.

Strickley v. Highland Boy Gold Mining Company, 200 U. S. 527, affords a striking illustration. The proceeding was one to condemn a right of way for an aerial bucket line across a placer mining claim of the plaintiffs in error. The Court again recognized "the inadequacy of use by the general public as a universal test" and that the public welfare of a state might demand that such rights of way should be accorded for aerial lines between the mines upon its mountain sides and the railways in the valleys below and hence that it could not be said that the individual benefit to the land owner in question took the case out of the category of permissible condemnation. As was said in *Hairston v. Danville & Western Railway Company*, 208 U. S. 598, 606, the determination of the question by the courts whether the nature of the use was public or private had been influenced "by considerations touching the resources, the capacity of the soil, the relative importance of industries to the general public welfare, and the long-established methods and habits of the people."

In *O'Neill v. Leamer*, 239 U. S. 244, the plaintiffs in error contended that the drainage plan in

question was simply one for the private advantage of the property owners benefited. But the Court said that "States may take account of their special exigencies, and when the extent of their arid or wet lands is such that a plan for irrigation or reclamation according to districts may fairly be regarded as one which promotes the public interest, there is nothing in the Federal Constitution which denies to them the right to formulate this policy or to exercise the power of eminent domain in carrying it into effect. * * * Nor is it an objection that private property within the district, which is established in execution of the public policy, will be benefited" (*id.*, p. 253; see also *Houch v. Little River Drainage District*, 239 U. S. 254).

In these cases, this Court in enforcing the Fourteenth Amendment has recognized the propriety of giving weight to State exigencies and of regarding with great respect the judgment of the State courts upon what should be deemed public uses within the State. Certainly, no less weight should be accorded to the determinations of Congress as to what is required for the general welfare of the country. If the fact that individuals are to benefit directly from the execution of the approved policy does not require the conclusion that the purpose is private in the one case, it does not require such a conclusion in the other. And when it is contended that provision by Congress for the use of public money is for a purpose essentially private, it cannot be doubted that due respect to the judgment of Congress requires the consideration of all the circumstances and conditions which can possibly support its action; and although this action takes a form through which direct advantages are to accrue to individuals, or

groups, there must still be the inquiry whether, notwithstanding this fact, the provision can be regarded as being for a purpose not special, private, or local, but in truth general and national.

Is then, the plan of the Federal Farm Loan Act primarily in aid of private or individual interests as distinguished from public purposes involved in the common defense and general welfare of the United States?

With respect to the features of the plan it is to be noted,

(1) The Act provides a *system* designed to promote agricultural development.

(2) The loans are made only to those who are or are about to become, actual cultivators of the soil, and are made upon the security of farm mortgages.

(3) These mortgage loans are made only for the following purposes: (a) to provide for the purchase of land for agricultural uses; (b) to provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; (c) to provide buildings and for the improvement of farm lands ("equipment" and "improvement" to be defined by the Federal Farm Loan Board); and (d) to liquidate indebtedness of the owner of the land mortgaged existing at the time of the organization of the first National Farm Loan Association within the county, or indebtedness subsequently incurred for the purposes above mentioned. No loan is to exceed fifty percent of the value of the land mortgaged and twenty percent of the value

of the permanent insured improvements thereon and the amount of loans to any one borrower is not to exceed \$10,000.

(4) The system is for continental United States (save Alaska), that is, the mortgage loans are to be available to actual cultivators of the soil throughout the country.

It is thus apparent that the Act provides for systematic aid to the development of agriculture, so devised as to be generally available throughout the country and so limited as to indicate the purpose to promote the actual cultivation of the soil in every part of the United States where cultivation is possible and where aid is needed for that specific purpose.

That this method of providing financial aid was deemed to be essential to the welfare of the country clearly appears from an examination of the views which prevailed in Congress. The cultivators of the soil, whose activities form the necessary foundation of the common prosperity, were lacking in the facilities which would enable agricultural development to be pressed to the utmost in response to the National exigency. To say the least this view was an entirely reasonable one. It makes no difference whether or not the Court would take the same view, as we submit that the Court would be unable to say that it was so destitute of foundation that it could not be entertained by Congress. The matter was peculiarly one for the exercise of the legislative discretion. That credit difficulties were an embarrassment to cultivators of the soil was not confined to any one section of the country. The significant thing in the prolonged hearings that were had upon this

subject by committees of Congress was that the same difficulties were encountered throughout the country and that a systematic country-wide relief appeared to be of grave importance. In the report of the Committee on Banking and Currency in May, 1916 (H. R. Report, No. 630) it was said:

"It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmers' requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farmland mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

To say that Congress was limited to the expenditure of many millions of dollars in investigations, maintenance of bureaus, inspections, purchase and distribution of seeds and plants, co-operation with States in experimentation, furnishing of bulletins and of statistical information, in order to foster agricultural development, and could not undertake this organization of financial aid which was essential to that development, would be to establish an artificial distinction un-

known to the Constitution and to conceive a Government not deserving to be called National.

Nor can the legislation be condemned as being outside the sphere of permissible Federal action without taking into consideration the existing exigencies within the contemplation of Congress. While the United States was not at war when this legislation was enacted, and the question is not one relating to the exercise of power incident to the actual conduct of war, it remains true that the Act was passed at a time when many of the civilized nations were at war and the question of maintenance of the food supply was of first importance. Even if it be assumed that our entry into the war was not then contemplated, there was still a serious emergency due to the devastation of the war and the withdrawal from agriculture of productive labor. The exigency which later was recognized by every one with respect not only to the food supply of this country, but of the world, it was within the power of Congress to foresee.

Appellant's counsel resorts to the familiar practice of picturing consequences which may ensue in the exercise of power. This is the revival of an argument, the futility of which was long since exposed. The fallacy was early pointed out by Alexander Hamilton in his Opinion as to the Constitutionality of the Bank of the United States (3 Hamilton's Works, p. 458). After showing that because the powers of government in this country are divided between the national and state governments it does not follow that the United States is not sovereign with regard to the objects of the powers delegated to the United States, and that as to all such powers and objects the United States has plenary and sovereign authority, he said in words which can never be forgotten (*id.*):

"It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the *end*, to which the measure relates as a *means*. If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority."

It cannot, therefore, be denied that if Congress has the power to see to the application of money in support of agricultural development in this country, it has the power to select the making of loans, according to a general system to cultivators of the soil throughout the country as a *means* to that end. To hold otherwise would be to compel the absolute disposition of money instead of making possible the repeated use of the same amount through a revolving fund. It would attempt to create an artificial measure of public ends, as limited to objects independent of individual benefit, as though such a thing could practically be conceived. It would interpose a judicial judgment as to matters of *policy*, which is obnoxious to any sound theory of judicial action. Manifestly, Congress is not limited in the putting of money into literature, the distribution of seeds, educational institutions, etc. It is not compelled to throw money into the street in the hope that the right passer-by will pick it up. It may devote itself intelligently to a direct benefit, through the making of loans in a systematic manner, provided its plan, as is clearly the case here, is of such a broad and general character as to be an appropriate means of serving a public interest.

The power of Congress in the application of money.

(b) In our former argument, we dwelt at some length upon the scope of the power to use or apply money, the power necessarily involved in the express authority conferred upon Congress

“To lay and collect Taxes, Duties, Imposts and Excises; to pay the Debts and provide for the common Defence and general Welfare of the United States” (Const., Art. I, sec. 8, subd. 1),

and also necessarily involved in the borrowing power, as obviously money raised by the exercise of the latter power can be used for any purpose for which money raised by taxation can be used.

We find in the appellant's brief no answer to the views of Hamilton, Marshall, Monroe and Story, as to the scope of this power.

Hamilton, Report on Manufactures (December 5, 1791; 4 Hamilton's Works, 151-152. Quoted in our brief on former argument, pp. 25-26).

President Monroe, “Views of the President of the United States on the Subject of Internal Improvements” (*id.*, pp. 27-28).

Gibbons v. Ogden, 9 Wheat. 199 (*id.*, p. 28).

1 Story on the Constitution, secs. 922-924 (*id.*, pp. 29-31).

Willoughby on the Constitution, sec. 269.

(See, also, 4 Jefferson's Correspondence, 524, 525; Mr. Adams' letter to Mr. Stevenson, July 11, 1832; 2 Elliot's Deb. 170, 183, 195, 328, 344; 3 *id.*,

262, 290; 4 *id.*, 226; Mr. Justice Miller's "Lectures on the Constitution," pp. 229-231, 235.)

The accepted view is not that the clause—"provide for the common Defence and general Welfare of the United States"—creates an independent power, or on the other hand that it is limited and explained by the subsequent enumeration of the powers of Congress, but that this clause does qualify the preceding clause with respect to the laying of taxes, etc., and thus defines the scope of the power of Congress *so far as the application of money is concerned*.

As Hamilton said (*supra*):

"It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems to be no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *as far as regards an application of money*. The only qualification of the generality of the phrase in question, which seems to be admissible, is this: that the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot.

Mr. Justice Story's discussion of the question is exhaustive and authoritative. He says (secs. 922-924):

"A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the

common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under such circumstances, necessarily a qualified power. If it is so, how then does it affect or in the slightest degree trench upon the other enumerated powers? . . . Each has its appropriate office and objects; each may exist without necessarily interfering with or annihilating the other (sec. 922). . . . But then, it is said, if Congress may lay taxes for the common defence and general welfare, the money may be appropriated for those purposes, although not within the scope of the other enumerated powers. Certainly, it may be so appropriated; for if Congress is authorized to lay taxes for such purposes, it would be strange, if, when raised, the money could not be applied to them. That would be to give a power for a certain end, and then deny the end intended by the power (sec. 923). . . . That the same means may sometimes or often be resorted to, to carry into effect the different powers, furnishes no objection; for that is common to all governments. That an appropriation of money may be the usual or best mode of carrying into effect some of these powers, furnishes no objection; for it is one

of the purposes for which the argument itself admits that the power of taxation is given. That it is indispensable for the due exercise of all the powers may admit of some doubt. The only real question is, whether, even admitting the power to lay taxes is appropriate for some of the purposes of other enumerated powers (for no one will contend that it will, of itself, reach or provide for them all), it is limited to such appropriations as grow out of the exercise of those powers. In other words, whether it is an incident to those powers, or a substantive power in other cases, which may concern the common defence and the general welfare. *If there are no other cases which concern the common defence and general welfare, except those within the scope of the other enumerated powers, the discussion is merely nominal and frivolous. If there are such cases, who is at liberty to say that, being for the common defence and general welfare, the Constitution did not intend to embrace them?* The preamble of the Constitution declares one of the objects to be, to provide for the common defence and to promote the general welfare; and if the power to lay taxes is in express terms given to provide for the common defence and general welfare, what ground can there be to construe the power short of the object,—to say that it shall be merely auxiliary to other enumerated powers, and not coextensive with its own terms and its avowed objects? One of the best established rules of interpretation, one which common-sense and reason forbid us to overlook, is, that when the object of a power is clearly defined by its terms, or avowed in the context, it ought to be construed so as to obtain the object, and not to defeat it. The circumstance that, so construed, the power may be abused, is no answer. All powers may be abused; but are they then to be abridged by those who are to administer them, or de-

nied to have any operation? If the people frame a constitution, the rulers are to obey it. Neither rulers nor any other functionaries, much less any private persons, have a right to cripple it, because it is, according to their own views, inconvenient or dangerous, unwise or impolitic, of narrow limits or of wide influence" (*italics ours*).

While this Court has not definitely passed upon the construction of the clause with reference to the scope of the power of Congress in the use of money (see *United States v. Realty Co.*, 163 U. S., 427, 440), there are general expressions supporting the view that the words—"provide for the common defence and the general welfare of the United States"—are to be taken as qualifying the power. See *Gibbons v. Ogden*, *supra*. In *United States v. Gettysburg Electric Railway Company*, 160 U. S., 668, 681, it is said: "It (Congress) has the great power of taxation to be exercised for the common defense and general welfare"; and this statement was made as a part of the reasoning of the court in sustaining the power of the United States to condemn land for the preservation of the battlefield of Gettysburg, as being for a public use, as it made direct appeal to patriotic sentiment and tended to enhance "love and respect for those institutions for which these heroic sacrifices were made" (*id.* p. 682). When the validity of the sugar bounty provision in the Tariff Act of October 1, 1890 (26 Stat., 567, par. 231), was challenged, the court found it unnecessary to decide the question (*Field v. Clark*, 143 U. S., 649, 695). Later, when, after the repeal of that provision Congress passed the Act of March 2, 1895 (28 Stat., 910, 933), providing a similar bounty upon sugar manufactured

and produced before the repeal, it was held that the appropriation was valid, as being in the discharge of a moral obligation which Congress was entitled to recognize as a "debt" within the fair meaning of the constitutional provision (*United States v. Realty Co.*, *supra*; *Allen v. Smith*, 173 U. S. 389, 394, 402). Certainly, this court has never decided adversely to the power of Congress to meet by its use of money great national needs and has never construed the taxing clause otherwise than in accord with the construction placed upon it by Hamilton, Marshall, Monroe and Story.

**Practical Construction of the power of Congress
to apply money.**

The power to tax and the power to apply the moneys raised by taxation are addressed to the same objects. The latter is qualified to the same extent as is the former. To hold otherwise, as Story says, "would be to give a power for a certain end, and then deny the end intended by the power." Congress, from the foundation of the government, has proceeded upon the view that the powers specified in the subsequent provisions of the Constitution do not limit its authority to appropriate money for the common defense and general welfare of the United States under the clause relating to taxes. Mr. Justice Story thus states the experience of the first forty years of our history (1 Story on the Constitution, sec. 991):

"In regard to the practice of the government, it has been entirely in conformity to the principles here laid down. Appropriations have never been limited by Congress to cases falling within the specific powers

enumerated in the Constitution, whether those powers be construed in their broad or narrow sense. And in an especial manner appropriations have been made to aid internal improvements of various sorts, in our roads, our navigation, our streams, and other objects of a national character and importance. In some cases, not silently, but upon discussion, Congress has gone the length of making appropriations to aid destitute foreigners and cities laboring under severe calamities; as in the relief of the St. Domingo refugees, in 1794, and the citizens of Venezuela, who suffered from an earthquake in 1812. (See Act of 12th Feb., 1794, Ch. 2; Act of 8th May, 1812, Ch. 79; 4 Elliot's Debates, 240). An illustration equally forcible of a domestic character, is in the bounty given in the cod fisheries, which was strenuously resisted on constitutional grounds in 1792, but which still maintains its place in the statute book of the United States" (See Act of 16th Feb., 1792, Ch. 6; 4 Elliot's Debates, 234-238).

In addition to the instances mentioned by Mr. Justice Story, we have numerous illustrations afforded by the action of Congress since his day. The annual appropriations show a practically continuous assertion of broad authority in the application of money, as, for example, in the support of the Bureau of Education (including the special provision for aiding the Education of the Blind, Act of March 3, 1879, Chap. 186, 20 Stat., 467), of the Smithsonian Institution, and of the constantly expanding and varied work of the Department of Agriculture (See, *e. g.*, Act of August 11, 1916, Chap. 313, 39 Stat., pp. 452-456; 463-467; 470). The validity of such action has not been questioned, and as Professor Willoughby says, "the doctrine has become an established one that Congress may appropriate money in aid of

matters which the Federal Government is not constitutionally able to administer and regulate." (Willoughby on the Constitution, sec. 269.) Mr. Justice Story sums up the matter by saying (sec. 977): "The argument in favor of the power" (to appropriate money for the common defense and general welfare) "is derived in the first place, from the language of the clause conferring the power (which, it is admitted, in its literal terms, covers it); secondly, from the nature of the power, which renders it in the highest degree expedient, if not indispensable, for the due operations of the national government; thirdly, from the early, constant, and decided maintenance of it by the government and its functionaries, as well as by many of our ablest statesmen, from the very commencement of the Constitution. So, that it has the language and intent of the text, and the practice of the government, to sustain it against an artificial doctrine set up on the other side."

Nothing could better illustrate the accepted principle than the appropriations to aid in agricultural development. Since the year 1839 there has been a constant disbursement of public moneys in the promotion and fostering of agriculture, in disseminating information, distributing seeds, and in aiding agricultural schools. For upwards of sixty years—since the Act of 1857 (11 Stat. 226)—Congress has made provision for the distribution of cuttings and seeds. It was in that year also that provision was made for investigation as to the consumption of cotton (*id.*).

The Department of Agriculture was established in 1862 (12 Stat. 387). The Act provided as to this department:

"the general designs and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word, and to procure, propagate, and distribute among the people new and valuable seeds and plants."

The far-sighted policy of the Morrill Land Grant Act of 1862 (12 Stat. 503) made possible through donations of public land the establishment of institutions for instruction in agriculture throughout the country. Funds have been provided to maintain bureaus of agricultural statistics, for the introduction and protection of insectivorous birds, for laboratories to engage in experimentation in agricultural chemistry (12 Stat. 69). The great pests, or enemies of crops, have been the subject of constant consideration, and frequent appropriations have been made to aid in their elimination (21 Stat. 259; 40 Stat. 374).

In 1884, the Bureau of Animal Industry was established to disseminate information as to domestic animals and their diseases (23 Stat. 277). In 1890, the weather bureau was put in charge of the Department of Agriculture (26 Stat. 653), to make more readily available comprehensive information as to matters of special interest to those engaged in the cultivation of the soil.

The Irrigation Survey was established in 1889 under the direction of the Secretary of the Interior (25 Stat. 960), and in 1913, the Bureau of Mines (37 Stat. 681).

The scope of the activities of the Department of Agriculture now embraces those of the Weather Bureau; the Bureau of Animal Industry (including inspection and quarantine work, the

eradication of scabies in sheep and cattle, tuberculin and mallein testing, experiments in animal feeding and breeding, including co-operation with State agricultural experiment stations, scientific investigations of hog cholera and other diseases of animals); the Bureau of Plant Industry (including investigations of diseases of plants, of orchard and other fruits, of forest and ornamental trees and shrubs, of soil bacteriology and plant-nutrition, of soil fertility, of plants yielding drugs, poisons and oils, of cereals and cereal disease, of sugar beets, and generally of crop production, and the purchase and distribution of valuable seeds, bulbs, shrubs, vines, cuttings and plants); the Forest Service (including various investigations in forestry); the Bureau of Chemistry (embracing various chemical and physical tests and biological investigations of food products); the Bureau of Soils (including investigations of soil types and chemical properties, of productivity and as to possible sources of supply of potash, nitrates, etc.); the Bureau of Entomology (including investigations of insects affecting fruits, orchards, vineyards and crops); the Bureau of Biological Survey (including the investigation of the food habits of birds and mammals in relation to agriculture); the Division of Publications; the Bureau of Crop Estimates (covering all important data relating to agriculture); the States Relations Service (including farmers' co-operative demonstration work in connection with State organizations, and for the study of methods to combat the cotton-boll weevil); the Office of Public Roads and Rural Engineering (including investigations as to farm irrigation and drainage and construction of farm buildings); the Office of Markets and Rural Organization (including investigations of marketing

methods, studies of co-operation among farmers in rural credits and other forms of co-operation in rural communities); and the Federal Horticultural Board (See, 39 Stat. 446-476; 1134-1166; 40 Stat. 973-1008).

The federal appropriations in 1917, in support of agriculture amounted to upwards of \$29,000,000, and in 1918 to upwards of \$45,000,000.

There can be no question as to the continuous practical construction of the powers of Congress to raise and apply money to the effect that this power is not limited to the objects enumerated in the subsequent provisions, but extends to what may properly be deemed to be embraced within the general welfare as expressly provided in the clause which confers the taxing power itself.

As Mr. Chief Justice Marshall said in *M'Culloch v. Maryland*, 4 Wheat, 316, 401:

"An exposition of the Constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."

The Borrowing Power.

What has been said with respect to the scope of the taxing power of Congress is applicable to the borrowing power. Certainly, the borrowing power is not more limited as to its objects than the taxing power. Where Congress has the power to apply money to an object, it can raise the money by the exercise of the borrowing power, as well as by taxation, as it may think wise.

As was said by Mr. Justice Gray, in *Juilliard v. Greenman*, 110 U. S., p. 444: "The words 'to borrow money,' as used in the Constitution, to desig-

nate a power vested in the national government, for the safety and welfare of the whole people, are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes."

It is manifest that if Congress is entitled to apply money for the common defense and the general welfare of the United States, it necessarily has a wide range of discretion with respect to the objects to be selected. This discretion is not vested in the courts, but in Congress, and the authority of the courts to enforce constitutional restrictions does not entitle them to substitute their judgment for that of Congress as to any question of expediency or policy. (*Wilson v. New*, 243 U. S. 332; *Champion v. Ames*, 188 U. S., 321, 363; *McCray v. United States*, 195 U. S., p. 55.) As has been said by Judge Cooley ("Taxation", 3d Ed., pp. 188, 189):

"It is otherwise with the federal Union also; for though its powers are not general like those of the state, but are limited and defined by the federal constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes require broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections."

And if the action of Congress in applying money may be judicially controlled, it is clear that this control could properly be exercised only in a case where it was perfectly plain that the broad limits of legislative discretion had been exceeded and that the application could not from any reasonable point of view be regarded as conducive to the common defense and general welfare.

We conclude then that it was within the power of Congress to have provided a system of credits, that is, to provide a general system for the making of loans to aid actual cultivators of the soil throughout the country, by the use of the moneys of the United States, whether these were raised by taxation or by loans secured by government obligations. It could have laid a tax or provided for the issue of government bonds for that purpose.

And it should be remembered that all that has been done to date by the Government, in its investments in the capital of the Federal Land Banks, and in its provision for the issue of Farm Loan Bonds in order to replenish the fund which started with the capital so subscribed, has been done by the Government itself, the entire operation having been conducted by Federal officers, not only the Federal Farm Loan Commissioners, but the directors of the Federal Land Banks who are still the appointees of the Federal Farm Loan Board, as provided in the Act of January 18, 1918.

All the Farm Loan Bonds which have been issued by the Federal Land Banks, including all the bonds issued by these banks which are the subject of this suit, are bonds, not only the form of which, but the issue of which, has been under the direct control of Federal officials, and these bonds have been issued and all the moneys received from the issue have been received, invested and dealt with exclusively by the officers of the Government of

the United States. The whole proceeding to this moment is a governmental proceeding pure and simple. It is also true that the proceedings hereinafter contemplated throughout the entire history of the Federal Land Banks as it may develop under the provisions of the Act, will be under the supervision of the Government and constitute the performance of a governmental function. But up to date and so far as the question in this suit is concerned, the proceeding has been governmental and nothing else. This alone, we submit, is sufficient to sustain the decree dismissing this bill. And, as we have said, from every point of view, both now and hereafter, the Federal Land Banks must be considered to be the instrumentalities of the Government.

(2) Having this power, with respect to the use of money, Congress could exercise the power by the adoption of appropriate means to that end and the creation of instrumentalities for that purpose.

The power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof" (Const. Art. I, Sec. 8, subd. 18) is a power expressly conferred. It relates to the means for executing *any* and *all* of the powers possessed by the United States. As the United States has the power *to use money* for public purposes, including the promotion of agricultural development, by an appropriate general system of aid to cultivators of the soil, we ask, *upon what ground can it be denied that Congress may create facilities and instrumentalities to this end?*

Appellant's counsel argue that the means adopted are neither "necessary" nor "proper" to the end in view. It is hardly necessary to point out that the words "necessary and proper" involve only the conception of appropriateness. As Hamilton said:

"It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful*, *requisite*, *incidental*, *useful*, or *conducive to*. It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, 'to make all *laws* necessary and proper for *carrying into execution* the *foregoing powers*, and *all other powers* vested by the Constitution in the *Government* of the United States, or in any *department* or *officer* thereof.

* * * * *

"The *degree* in which a measure is necessary can never be a *test* of the legal right to adopt it; that must be a matter of opinion, and can only be a *test* of expediency. The *relation* between the *measure* and the *end*; between the *nature* of the *means* employed towards the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of

necessity or utility" (3 Hamilton's Works, pp. 452, 453, 454).

In the classic words of Mr. Chief Justice Marshall (*M'Culloch v. Maryland*, 4 Wheat. 316; 415-416, 419-420, 421):

"The subject is the execution of those great powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. To have declared that the best means shall not be used, but those alone without which the power given would be nugatory, would have been to deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances. If we apply this principle of construction to any of the powers of the government, we shall find it so pernicious in its operation that we shall be compelled to discard it."

And, referring to subdivision 18 of Section 8 of Article I of the Constitution, the Chief Justice continued:

"1st. The clause is placed among the powers of Congress, not among the limitations on those powers.

"2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted.

* * * * *

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

What, then, is the *end* to which the *means* are to be related? The appellant's counsel construct their premise to fit their conclusion. They argue that the *end* is the "*appropriation*" by Congress and hence that only what is requisite to the "*appropriation*" is within the power of Congress. The argument in substance is that if Congress appropriates \$2,000,000 for a public purpose, it may create the machinery for expending the money. Also, we suppose it to be meant, that if Congress desires to borrow \$2,000,000 for a public purpose it may create the mechanism for borrowing the

money, may define the sort of security which is to be issued, and the remedies which will be available and the funds to which there may be recourse on the part of those who lend the money. This, as we have said, is all that is needed, so far as the present question is concerned.

But this view of the *end* is altogether too narrow; it attempts to measure the end by the form of the action of Congress. The *end* for which the power of Congress is conferred, is not the mere "appropriating" by Congress. The power is directed to the *use of money* to provide for the common defense and the general welfare. The power, as we have seen, is not a broad independent power to do *anything* for the common defense and the general welfare, and thus to derogate from all specification of powers, but, as Hamilton said, it is a power for these purposes "*as far as regards an application of money*" (4 Hamilton's Works, 151-152).

As well might it be said that the power of Congress to regulate commerce, together with the authority to do whatever is necessary and proper to carry that power into execution, only embraces the means appropriate to the carrying out of what Congress may undertake to do through the Government directly. The defect in this reasoning is apparent. If the power to regulate commerce embraces the power to control navigation and to build bridges, Congress is not limited to building a bridge itself, or to the building of a bridge through Government officers and employees. Congress may create a corporation to build the bridge. The argument for a more limited view of the power of Congress is in substance the same argument which was repudiated by this Court in *M'Culloch v. Maryland*, *supra*.

To quote again from Hamilton, the soundness of whose reasoning upon this subject was fully confirmed by the opinions of Mr. Chief Justice Marshall. Hamilton says, by way of illustration, that among the expedients which might be adopted in appointing the money or thing in which taxes might be paid would be that of "bills issued under the authority of the United States," and he adds:

"Now the manner of issuing these bills is again matter of discretion. The government might doubtless proceed in the following manner:

"It might provide that they should be issued under the direction of certain officers, payable on demand; and, in order to support their credit, and give them a ready circulation, it might, besides giving them a currency in its taxes, set apart, out of any moneys in its treasury, a given sum, and appropriate it, under the direction of those officers, as a fund for answering the bills, as presented for payment.

"The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes. For the simplest and most precise idea of a bank is, a deposit of coin, or other property, as a fund for *circulating a credit* upon it, which is to answer the purpose of money. That such an arrangement would be equivalent to the establishment of a bank, would become obvious, if the place where the fund to be set apart was kept should be made a receptacle of the moneys of all other persons who should incline to deposit them there for safe-keeping; and would become still more so, if the officers charged with the direction of the fund were authorized to make discounts at the usual rate of interest, upon good security. To deny the power of the government to add these ingre-

dients to the plan, would be to refine away all government.

"A further process will still more clearly illustrate the point. Suppose, when the species of bank which has been described was about to be instituted, it was to be urged that, in order to secure to it a due degree of confidence, the fund ought not only to be set apart and appropriated generally, but ought to be specifically vested in the officers who were to have the direction of it, and in their *successors* in office, to the end that it might acquire the character of *private property* incapable of being resumed without a violation of the sanctions by which the rights of property are protected, and occasioning more serious and general alarm—the apprehension of which might operate as a check upon the government. Such a proposition might be opposed by arguments against the expediency of it, or the solidity of the reason assigned for it, but it is not conceivable what could be urged against its constitutionality; and yet such a disposition of the thing would amount to the erection of a corporation; for the true definition of a corporation seems to be this: It is a *legal* person, or a person created by act of law, consisting of one or more natural persons authorized to hold property, or a franchise in succession, in a legal, as contradistinguished from natural, capacity" (3 Hamilton's Works, pp. 475-476).

The great powers to lay taxes and to borrow money necessarily involve the use of money for the specified ends, and so long as Congress does not go beyond the provisions for the *use of money for public purposes*, the creation of facilities for the application of money to those ends is clearly within the powers. It is not necessary that the people should be taxed; Congress may provide for borrowing the money. It is not necessary that, in

providing for the borrowing of money, Congress should issue a government obligation payable out of any moneys in the Treasury and constituting a general charge against the Government, any more than it is necessary for Congress directly to build a railroad and hire its employees. Congress, having the power to devote money to the fostering of the primary concern of the country, its food supply, can create a bureau through which the money may be obtained and used under governmental supervision. Congress may provide for the borrowing of money under the direction of government officers and for the issue of a described security payable out of a special fund created in the course of a prescribed activity. The construction of the Constitution is not a matter of such artificiality as to require that Congress must provide for the issue of government bonds constituting a general charge, when it can get the money for the same purpose by providing for the issue of bonds under governmental supervision by an instrumentality of its own creation to be paid out of a designated fund accumulated under its direction. If Congress has the power, and we can see no ground upon which this power can be denied, to issue government bonds and use the moneys in making loans to cultivators of the soil throughout the country in a systematic manner in a way to promote agriculture, then it would be the extreme of nicety, utterly inadmissible in view of the applicable decisions of this Court, to say that the only way that Congress could achieve this object would be to issue government bonds and loan the money directly and that it could not create Federal Land Banks to make loans through co-operative associations and issue bonds against farm mortgages.

The first question is whether the money is to be applied to a public purpose; whether Congress can raise this money by borrowing on government bonds and applying it to that purpose. If this be found to be the case, as we conceive it clearly to be, then we have simply the question of the means employed under the direction of Congress in raising the money for the public purpose. The selection of methods and agencies is in the discretion of Congress, the great end being *the use of money for the public purpose*.

In *Osborn v. The Bank*, 9 Wheat. pp. 863, 864, Mr. Chief Justice Marshall gave several illustrations showing the scope of the power of Congress. For example, he said:

“If, instead of the Secretary of the Treasury, a distinct office were to be created for the purpose, filled by a person who should receive, as a compensation for his time, labour, and expense, the profits of the banking business, instead of other emoluments, to be drawn from the treasury, which banking business was essential to the operations of the government, would each State in the Union possess a right to control these operations?”

Will it be said that Congress, having the power to borrow money and to issue government bonds, cannot issue bonds payable only out of a segregated fund?

Will it be said that Congress cannot provide for bonds to be issued by a designated officer of the Government, the bonds to be paid out of a particular fund and the moneys thus raised to be devoted to public purposes?

Could not Congress provide, if it saw fit, for bonds to be issued by a Collector of Customs, to be paid out of customs receipts? *Suppose an exi-*

gency, in which the public credit was very low and it were necessary in order to float an issue of bonds to segregate funds and issue bonds against them, would not this be within the power of Congress?

Will it be said that Congress cannot provide for the issue of bonds by a *Bureau* of the Government, in the name of the Bureau and to be paid out of a fund created in the course of activities prescribed by Congress? And will it be said that Congress, having this power, cannot create a corporate facility, organized by the Government itself, directed and supervised by its officers, and authorize the issue of bonds through this instrumentality against designated funds, or collateral, in order to raise money to be applied to public purposes?

The theory upon which the power of Congress to create any corporation rests is that Congress may create an instrumentality instead of doing the work directly through government officers or unincorporated governmental departments. As Mr. Chief Justice Marshall said in *M'Culloch v. Maryland*, (4 Wheat. 316, 407-409, 421, 423):

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American con-

stitution, is not only to be inferred from the nature of the instrument, but from the language. * * * * In considering this question, then, we must never forget, that it is a *constitution* we are expounding.

"Although, among the enumerated powers of government, we do not find the word 'bank' or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government. It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may with great reason be contended, that a government, entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulf of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, *that* raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction, (unless the words imperiously

require it,) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers."

"That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved." "But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This Court disclaims all pretensions to such a power."

Granted that, so far as the use of money is concerned, Congress has power to devote it to the fostering of agricultural development by a general system of loans or credits, and that Congress can provide for the issue of government bonds for this purpose, it would seem to be clear that Congress can create these Federal Land Banks as appropriate instrumentalities.

Embraced within the authority of Congress is the power to regulate the currency (*Osborn v. Bank*, 9 Wheat. p. 873; *Juilliard v. Greenman*, 110 U. S. p. 147). But Congress, for this purpose, does not have to issue government notes; Congress

can provide for the issue of notes by a bank which it charters and can protect these notes.

The familiar principle has abundant illustration in connection with the power to regulate interstate commerce. This power embraces the power to foster, protect and preserve. The express power is to "regulate," and it has been clearly set forth that "interstate commerce—if not always, at any rate when the commerce is not transportation—is an act," and that Congress "can do anything which, in the exercise by itself of a fair discretion, may be deemed appropriate to save the act of interstate commerce from prevention or interruption, or to make that act more secure, more reliable or more efficient"; and thus that "Congress may legislate about the agents and instruments of interstate commerce, and about the conditions under which those agents and instruments perform the work of interstate commerce" (*Second Employers Liability Cases*, 223 U. S. 1, 48). But Congress is not limited to the provision of rules governing the acts of individuals or of State corporations engaged in interstate commerce. Congress may itself create a railroad corporation and in this way control interstate commerce through a creature of its own making and through its rules imposed upon that creature. Thus, in *California v. Pacific R. R. Co.*, 127 U. S. 1, 39, the Court said:

"It cannot at the present day be doubted that Congress, under the power to regulate commerce among the several States, as well as to provide for postal accommodations and military exigencies, had authority to pass these laws. The power to construct, or to authorize individuals or corporations to construct, national highways and bridges from State to State, is essential to the complete

control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of the power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject."

So, as already stated, Congress having the power to regulate or control, may provide instrumentalities of interstate commerce; and, having this power, it is not necessary for Congress directly to build railroads, to be owned and operated by the Government, but there is also embraced the authority to create a corporation to build and operate the railroad. This was all found within the power to "regulate" or make rules for the government of interstate commerce.

In the present case, the power expressly conferred clearly embraces the power to *use money in order to provide for the common defence and general welfare*. It is not a power in Congress to cultivate the soil or to manage agricultural activities within a State, but it is a power in Congress to use money to foster cultivation of the soil and to support these activities in aid of the gen-

eral welfare. So far as the legislation is directed to *the use of money*, and to the provision for the use of facilities for obtaining the money, which Congress can unquestionably obtain directly by an issue of government bonds if it sees fit, it is within the power of Congress—unless we are suddenly to return to a theory of construction heretofore discredited—to create instrumentalities for the raising of the money and for its application to the permitted object.

The conjuring up of bogies to influence the mind as it deals with the broad question of constitutional construction cannot have the slightest effect. For, after all is said and done, the broadest exercise of the power for which we contend merely relates to the use of money for purposes of public importance, a course sanctioned by constant practice since the foundation of the Government. If we were permitted to balance considerations of policy, it would seem to be a far more serious thing to tie the hands of Congress with respect to the use of money in the aid of the general welfare of the people, than it would be to run the risk of ill-advised financial aid. The protection against the latter is found in the judgment of the electorate and in the application of common sense. It is far better, we submit, to rely upon this than to hamstring Congress in the use of money by a narrow and insensible construction, which would permit Congress to issue government bonds and use the money thus obtained for any public purpose, however broadly conceived, and would not permit Congress to create a facility or adapt its measures to the same end in a practicable manner.

Again, we revert to the fact that the measure of the *need* is for Congress to determine in its own judgment. In truth, Congress in the present

instance acted at a time when every stimulus for the food supply was necessary; when, although we were not at war, Europe was convulsed with the most terrible war in history, and when the demand upon our food supply exceeded anything theretofore imaginable. To-day, the greatest problem of our country, in view of the multiplied and intensified attractions of our cities, is to keep the youth upon the soil, to provide farm labor, to secure an adequate supply of farm products and thus to furnish the essential foundation of our entire community life. The need as it exists to-day is an obvious and pressing one, but if the Great War had gone the other way and our resources had been sadly strained by a long continued conflict; if there was here to-day the most serious scarcity of food such as that which has been known in Austria; if there was a widespread famine and our people were threatened with starvation; Congress would still have only the power which it now has to give relief. If Congress cannot now organize financial aid to encourage the production of food, it could not even in such an emergency, for its power would be no greater. Again, if the resources of the Nation had been strained so that public credit was low, and the floating of the Government bonds was extremely difficult, and there was the most serious need of additional fiscal agencies through which money could be obtained and every possible effort was required at once to stimulate the production of food and to replenish the public treasury, and it appeared that a mechanism like that of the Federal Land Banks was an obvious measure designed to attain these ends, still Congress would have only the power that it has now. If Congress can-

not now create these Federal Land Banks, it could not in such a situation as that just described.

The pressure of need does not increase governmental power, but only calls for its exercise. It is for Congress to determine the measure of need, and having determined it, that question is not before this Court. The power, we insist, exists now just the same as it would exist in the most severe crisis, in the light of which no person would be heard to start a doubt.

The Federal Land Banks, not only as they now exist as mere incorporated bureaus of the Government, directed in all their activities by Government officials, but also as they will exist after the Government stock has been retired and after the bonds held by the Treasury have been sold or paid, constitute facilities and instrumentalities for the use of money for a public purpose of great importance; and it was clearly within the authority of Congress, either to appropriate money or to issue Government bonds and apply the proceeds directly through the Treasury Department to the end in view, or to create these facilities and instrumentalities as appropriate means to the same end.

SECOND: Congress has the power to judge for itself what fiscal agencies the Government needs and its decision of that question is not open to judicial review. Congress may create in its discretion, as in this instance it has created, moneyed institutions to serve as fiscal agents of the Government and also to provide a market, as stated in the Act, for United States bonds.

The Federal Land Banks start with the Government virtually as the sole stockholder and in fact as the sole manager. As the Federal Land Banks go on, the coöperative associations, composed of the borrowers and through which the loans are made, take stock in the Federal Land Banks to the extent of five per cent of the loans and this stock is retired as the loans to which the investments are tributary are paid off. This issue of stock is merely a way of securing to the borrower a share in any profit as against his loan. The Government, so long as the Treasury holds farm loan bonds, continues its actual direction and management, having not only the Farm Loan Board, but the directors of each Federal Land Bank as Government appointees. When, in the future, the Treasury no longer holds bonds of a Federal land bank purchased under the amendment of 1918, and six of the directors are selected by the Cooperative Loan Associations as provided in the Act (Sec. 4), three of the directors still being Federal employees (*id.*) and the Federal Farm Loan Board still retaining its supervision (Sec. 17), not only would the Federal Land Banks continue to perform the governmental function to which we have already referred, *but these banks will continue to be, as they have been from the outset, fiscal agents of the Government.*

Thus, the Federal Land Banks, starting as a governmental institution, *never lose that quality. Their main purpose throughout is to serve as instrumentalities of the Government.*

The power of Congress to establish banks, as appropriate facilities to aid in the fiscal operations of the Federal government is beyond controversy (*M'Culloch v. Maryland, supra; Osborn v. Bank of the United States, supra; First National Bank v. Trust Company*, 244 U. S. 416). The fact that a banking institution established by the Federal government may largely be engaged in private transactions incident to the banking business, that is, in receiving deposits from individuals, firms, and private corporations, and in making ordinary loans and discounts, through which it may derive the gains which justify it as a business enterprise, does not militate against the authority of Congress to incorporate it as a Federal agency, in view of the fact that the nature of its business is such as to qualify it for service in the financial transactions of the Government. We have already quoted much that was said in relation to this subject in *M'Culloch v. Maryland, supra*. We may add the following from the same opinion (pp. 409, 422-424):

"It is not denied, that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue, and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance. * * *

"If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for exclud-

ing the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government.

"But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. * * *

"After the most deliberate consideration, it is the unanimous and decided opinion of this Court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land."

(See, also, Hamilton's Opinion as to the Constitutionality of the Bank of the United States, February 23, 1791, 3 Hamilton's Works, 445; Story on the Constitution, secs. 1259-1271.)

See, also, *Osborn v. Bank*, 9 Wheat. 738.

In *Farmers & Mechanics National Bank v. Dearing*, 91 U. S. 29, 33, 34, the validity of the present national banking system was sustained upon the same principle.

"The constitutionality of the act of 1864 is not questioned. It rests on the same principle as the act creating the second bank of the United States. The reasoning of Secretary Hamilton and of this court in *McCulloch v. Maryland* (4 Wheat. 316) and in *Osborne v. The Bank of the United States* (9 *id.* 708), therefore, applies. The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge."

See also *Mercantile Bank v. New York*, 121 U. S. 138, 154.

Davis v. Elmira Savings Bank, 161 U. S. 275, 283.

Easton v. Iowa, 188 U. S. 220, 229.

It must therefore be taken to be established that Congress is not limited with respect to the creation of fiscal agents of the United States, and that, it may create these agencies as it sees fit without affording ground for judicial objection. It is not within the province of the Court to say that Congress creates more agencies than it needs, or that it should prefer one sort of agent to another if the agency it creates is adapted to aid the Government in its fiscal operations in any manner.

The Federal Land Banks as Fiscal Agents of the United States.

The Act in question expressly states as one of its objects

“to create Government depositaries and financial agents for the United States”.

The argument of appellant's counsel seems to proceed on the assumption that this Court may ignore the explicit provision of the Act that the Federal Land Banks, established by the Government itself and equipped as moneyed institutions to serve as fiscal agents for the Government, should not be regarded as such fiscal agents and that Congress should be denied the power to create them as such.

The Act says that these Federal Land Banks, organized by the Government itself,

“shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary” (Sec. 6).

Appellant's counsel says in substance that there are a great many institutions that may serve, and do serve, as depositaries of public funds. But it is not for the Court to say how many there shall be or how they shall be established. This is the prerogative of Congress. If Congress prefers to create institutions of its own which may be depositaries of public money, upon what principle can its competency to do this be denied?

In the present case the Federal Land Banks are organized by the Government, directed by the Government, and perform functions which Congress deems to be of vast importance. Certainly, they are moneyed institutions and as such are fit to act as depositaries of public money. Congress thus has institutions of its own creation; its own creatures, subject to the most complete control, to serve as depositaries. Can it possibly be said that there is no power on the part of Congress to provide in this manner for depositaries? Suppose Congress saw fit to withdraw a great part of its deposits from other institutions and to put the public moneys in a particular class of institutions, created by itself and equipped to act as depositaries, would not Congress have the power to carry out this plan and is it for the Court to say to what extent deposits of public money shall be made in this way?

Again, the Act says that these Land Banks

"may also be employed as financial agents of the Government" (Sec. 6).

So far as the Federal Land Banks are concerned, they are organized by the Government directly, the Government having at the start the only interest and control; and created in this way *they are agents* and however their mortgage loan business may develop *they always remain "financial agents of the Government."*

But, appellant's counsel argue that the provision is permissive, that the provision is that they "*may also be employed*" as financial agents of the Government. This would not be sufficient, as it seems to us, to justify overriding the power of Congress to create these agencies. But the argument loses sight of the next clause, which is

"and they *shall* perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them."

This is mandatory. In other words, Congress provides that Government officers shall establish by Government funds and with Government control a moneyed institution which begins as, and always will be, a financial agent of the Government and *must* serve the Government at any time in the performance of such duties as the Government may reasonably require.

Appellant's counsel speaks of pretext. But is anything more clear than that this Court cannot ascribe to Congress a pretext, or assert that its action is a pretence, when Congress is exercising its lawful power? (*McCray v. United States, supra*). Congress has the right to establish fiscal agencies, to create financial agents. Is its power to be denied to create a moneyed corporation, to act as a financial agent—a corporation like these Federal Land Banks organized by the Government itself?

The record in this case shows that instead of being a pretext these Federal Land Banks within a short time after their organization were utilized for a most important service as financial agents of the Government. When, in the course of the War it was necessary to make seed grain loans to farmers in drought-stricken sections, three of the Federal Land Banks were called upon to act for this purpose and made 15,000 loans of this character, serving without compensation. The bill of complaint sets forth (Transcript, p. 10):

"During the summer of 1918, the Federal Land Banks at Wichita, St. Paul and Spokane

were designated as financial agents of the Government for the making of seed grain loans to farmers in drought-stricken sections, the President having at the request of the Secretary of Agriculture set aside \$5,000,000 for that purpose out of his \$100,000,000 war funds. The three banks mentioned have made upwards of 15,000 loans of said character aggregating in all the sum of upwards of \$4,500,000, and are now engaged in collecting said loans, all of which were secured by crop liens. The said banks acted in said matter without compensation under the provisions of a joint circular of the Treasury Department and the Department of Agriculture allowing the actual expenses of the several Federal Land Banks, but no compensation."

The Federal Land Banks are not the less *banks* because their banking powers are limited. A bank is a moneyed institution which establishes a basis for credit. It receives, transmits and pays out money and thus is equipped to act as a fiscal agent for the Government. The circumstance that credit is extended upon farm lands as security, does not make the land bank any the less a bank, that is, a moneyed institution which renders fiscal services. In *Osborn v. The Bank*, 9 Wheat. 738, the Court said, pp. 860-862:

"The whole opinion of the Court, in the case of *M'Culloch v. The State of Maryland*, is founded on, and sustained by, the idea that the Bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only.

It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavour to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, &c. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business.

“Why is it that Congress can incorporate or create a Bank? This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is ‘necessary and proper’ for carrying on the fiscal operations of government. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter? If it can, if it be as competent to the purposes of government without, as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then this faculty is necessary to the legitimate operations of government, and was constitutionally and rightfully engrafted on the institution. It is, in that view of the subject, the vital part of the corporation; it is its soul; and the right to preserve it originates in the same principle, with the right to preserve the skeleton or body which it animates. The distinction between destroying what is denominated the corporate franchise, and destroying its vivifying principle, is precisely as incapable of being maintained, as a distinction between the right to sentence a human being to death, and a right to sentence him to a total

privation of sustenance during life. Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute."

In the *Legal Tender Cases*, 12 Wall. 457, 537, 538, the Court said:

"Under the power to regulate commerce, provision has been made by law for the improvement of harbors, the establishment of observatories, the erection of lighthouses, breakwaters, and buoys, the registry, enrolment, and construction of ships, and a code has been enacted for the government of seamen. Under the same power and other powers over the revenue and the currency of the country, for the convenience of the treasury and internal commerce, a corporation known as the United States Bank was early created. To its capital the government subscribed one-fifth of its stock. But the corporation was a private one, doing business for its own profit. Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a convenient instrument or means for accomplishing one or more of the ends for which the government was established, or, in the language of the first article, already quoted, 'necessary and proper' for carrying into execution some or all the powers vested in the government. Clearly this necessity, if any existed, was not a direct and obvious one. Yet this court, in *McCulloch v. Maryland*, unanimously ruled that in authorizing the bank, Congress had not transcended its powers. * * *

"This is enough to show how, from the earliest period of our existence as a nation, the powers conferred by the Constitution have been construed by Congress and by this court whenever such action by Congress has been

called in question. Happily the true meaning of the clause authorizing the enactment of all laws necessary and proper for carrying into execution the express powers conferred upon Congress, and all other powers vested in the government of the United States, or in any of its departments or officers, has long since been settled.

"In *Fisher v. Blight*, this court, speaking by Chief Justice Marshall, said that in construing it 'it would be incorrect and would produce endless difficulties if the opinion should be maintained that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose it might be said with respect to each that it was not necessary because the end might be obtained by other means.' "

And with respect to the validity of the National Banking Act, see *Farmers and Mechanics National Bank v. Dearing*, 91 U. S. 29.

In a general way, the facilities furnished by national banks may be described as those relating

(1) *To the receipt, transmission and disbursement of the public money.* (See *M'Culloch v. Maryland*, 4 Wheat., pp. 407, 408, 409.) It was said of the old Bank of the United States: "It is an immense machine, economically and beneficially applied to the fiscal transactions of the nation. * * * it is now become the functionary that collects, the depository that holds, the vehicle that transports, the guard that protects, and the agent that distributes and pays away, the millions that pass annually through the national treasury." (Mr. Justice Johnson, in *Osborn v. The Bank*, 9 Wheat., p. 872.)

(2) To the exercise of *the borrowing power*.
 "A bank has a direct relation to the power of borrowing money, because it is a usual, and in sudden emergencies an essential, instrument in the obtaining of loans to government.

"A nation is threatened with war; large sums are wanted on a sudden to make the necessary preparations. Taxes are laid for the purpose, but it requires time to obtain the benefit of them. Anticipation is indispensable. If there be a bank the supply can at once be had. If there be none, loans from individuals must be sought. The progress of these is often too slow for the exigency; in some situations they are not practicable at all. Frequently, when they are, it is of great consequence to be able to anticipate the product of them by advance from a bank. * * * The legislative power of borrowing money, and of making all laws necessary and proper for carrying into execution that power, seems obviously competent to the appointment of the *organ*, through which the abilities and wills of individuals may be most efficaciously exerted for the accommodation of the government by loans." (Hamilton, Opinion as to the Constitutionality of the Bank of the United States, February 23, 1791, 3 Hamilton's Works, pp. 477-479.)

(3) To the exercise of the power *to regulate the currency of the country* through the issue, under appropriate regulations, of national bank notes which pass from hand to hand as currency. (*Osborn v. The Bank*, 9 Wheat., pp. 864, 873; *Juilliard v. Greenman*, 110 U. S. p. 445; *Veazie Bank v. Fenno*, 8 Wall. p. 549.)

The recognized power with respect to the currency, as already noted, is a striking illustration

of the scope of Federal authority. While Congress has the power to provide for the issue of notes by the Government, it is not necessary that the Government should issue the notes, but Congress may provide for the creation of corporations and that these corporations may issue notes which will circulate as currency. That is, Congress can organize corporate facilities to do that which it may authorize the Government to do directly.

Moreover, the recognition of the power to make provision for currency which may pass from hand to hand, through bank notes, is merely a recognition of the needs of exchange and of the fundamental requirements of *credit*. To provide for a combination of financial resources in order to afford credit facilities which are needed to give stability to enterprise and thus to maintain the public credit, is a necessary feature of the money power which must reside in Government and in this country must reside, and does reside, in the Federal Government. The experience of foreign countries with respect to agricultural credits, instead of detracting from the force of the argument in support of the Federal Farm Loan Act, greatly strengthens it, for that experience demonstrates the national need, and as this national need relates to the *use of money*, and the extension of *financial credit*, it is a need which can be met in this country by the exercise of national power which extends to the *financial operations* which are essential to maintain national stability and make it possible through credit and currency facilities to conduct the operations both of production and trade.

The limitation of banking powers, so far as commercial banking is concerned, in no way unfits the Federal Land Banks for operations as

fiscal agents of the Government. The Federal Land Banks are both credit instrumentalities and facilities for receipt, transmission and payment of money. They are institutions organized by the Government to deal in money and thus are appropriate means for the conduct of transactions relating to the public money. As banking organizations, they have the qualifications to render service as depositaries and financial agents. In this aspect, it cannot be considered as a determining feature that these banks are to make loans to cultivators of the soil on farm security, and not to merchants on commercial paper; or that they are not to accept deposits payable upon demand except from their own stockholders. The Federal Land Banks may borrow money, give security therefor, and pay interest thereon; they may receive deposits from their stockholders, payable upon demand; they may deposit their securities and their current funds subject to check with any member bank of the Federal Reserve System and receive interest; they must hold at least twenty-five per cent. of the capital for which stock is outstanding in the name of national farm loan associations in quick assets, consisting of cash in their own vaults, or in deposits in member banks of the Federal Reserve System, or in readily marketable securities approved under the rules of the Federal Farm Loan Board; their farm loan bonds are a lawful investment for all fiduciary and trust funds (subject to the laws of the several States), and may be accepted as security for all public deposits. In short, the Federal Land Banks will be constantly, in the course of their authorized business, receiving and disbursing money and will thus have facilities available for governmental transactions.

We repeat that it is not a question for the courts whether the Government has need of these additional facilities. It is hardly necessary to point out the vast service rendered by the Federal Reserve System in the recent crisis. The discretion of Congress cannot be overridden. It is a matter for Congress to decide if the facilities are of the kind which the Federal Government may properly use in the performance of its functions.

The Federal Land Banks as Facilities to Aid in Furnishing a Market for United States Bonds.

This is a stated purpose of the Act, and the provisions of the Act are aptly framed to accomplish it.

It is not a question whether or not the Government could get along without this aid for the marketing of United States bonds. The question here is precisely the same as though it was perfectly apparent to everyone that the aid furnished by these Federal Land Banks was *absolutely indispensable*. For the power of Congress is exactly the same and the question whether the power should be exercised is not for the Court but for Congress exclusively. The question here is whether these moneyed institutions do aid in providing a market for United States bonds. If they do, upon what ground can it be said that Congress could not create them?

It is required that not less than five per cent of the capital of the Federal Land Banks for which stock is outstanding in the name of national farm loan associations shall be invested in United States bonds (sec. 5). Moreover, these coöperative associations have power

"Fourth. To issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four percentum per annum after six days from date, convertible into farm loan bonds when presented at the Federal Land Bank of the district in the amount of \$25 or any multiple thereof" (sec. 11).

The Federal Land Banks are empowered

"Seventh. To borrow money, to give security therefor, and to pay interest thereon.

"Eighth. To buy and sell United States bonds" (sec. 13).

The important opportunity thus afforded for getting at the resources of the country through coöperative associations, in order to aid in furnishing a market for United States bonds is perfectly obvious. If our War had continued for five or six years every resource of this kind might have been absolutely required. So important did this feature of the Act appear to be that Senator Lodge presented a statement with respect to "Government Savings-Bank Features of the Hollis Bill," in which he said (Cong. Rec., 64th Cong., 1st Sess., Vol. 53, Pt. 7, p. 7128):

"In view of these clauses, the Federal Land Banks would be government banks for savings and deposits, while their entire resources may be used in financing government projects instead of in farm mortgaging."

Who shall say that Congress could not entertain and carry out this purpose?

It should be noted that there are 4,000 of these coöperative farm loan associations which have been chartered by the Government and 2,000 of these associations have begun the creation of re-

serves. The significance of this in respect to the marketing of United States bonds requires no further comment.

Further, *amortization and other payments* on the principal of mortgage loans may be used for the purpose of United States Government bonds. The Farm Loan bonds which the Federal Land Banks are authorized to issue may be secured by United States Government bonds and later may be substituted for such securities for mortgages withdrawn from the Farm Loan Registrar (sec. 22).

It thus appears that these Federal Land Banks organized by the Government have a *very real and direct relation* not only to the performance of duties as fiscal agents of the Government but to the supplying of a market for United States bonds, and we submit that this office of these banks cannot be ignored.

Summary.

We therefore conclude that the Federal Land Banks are lawfully created agencies of the United States, in that

- (a) They are the means for the application of public moneys for a proper purpose;
- (b) They are facilities organized for the purpose of supplying financial aid through credits, on a general plan, which it is competent for the Government directly to supply and to organize instrumentalities to supply;

(c) They are constituted fiscal agents of the Government and are bound to perform all reasonable duties imposed upon them as such agents;

(d) They aid in the exercise of the borrowing power by the provision for investment and dealing in United States bonds.

Each one of these purposes would be sufficient to sustain the Act.

The Federal Land Banks from their inception to their winding up are nothing but Federal instrumentalities whose main purpose it is to perform a governmental function.

THIRD: Congress may protect the securities created under its legislation from impairment or destruction, by making them exempt from taxation.

The question of the validity of the tax exemption feature of the Act is not an independent one. This question turns upon the validity of the provisions of the Act for the creation of the Federal Land Banks and for the issue of the Farm Loan Bonds. It cannot be doubted that Congress can protect its corporations validly created, and the securities validly issued by such corporations under its authority, from tax levies.

The Farm Loan bonds which have been issued by the Federal Land Banks have been issued directly on the initiative and under the control of Federal officers, acting under the Act of Congress in directing and supervising the affairs of these banks organized by the Government. These Farm Loan bonds are securities created pursuant to the legislation of Congress. And, at any time in the future, when these Federal Land Banks issue Farm Loan bonds, these securities will be issued by corporations serving as Federal agencies, and will be created under the direct authority of Congress.

The reason that Congress may protect such instrumentalities and securities from taxation is that this protection is essential to provide against their impairment or destruction. Such protection in no way impairs the authority of the States. The States may still manage their own concerns, but the protection is necessary to maintain the authority of the Nation and the instrumentalities and securities for which it provides. What was said by Mr. Chief Justice Marshall upon this

point in *M'Culloch v. Maryland*, *supra* (4 Wheat. pp. 432, 433) is controlling:

"If the States may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

"Gentlemen say, they do not claim the right to extend State taxation to these objects. They limit their pretensions to property. But on what principle is this distinction made? Those who make it have furnished no reason for it, and the principle for which they contend denies it. They contend that the power of taxation has no other limit than is found in the 10th section of the 1st article of the constitution; that, with respect to every thing else, the power of the States is supreme, and admits of no control. If this be true, the distinction between property and other subjects to which the power of taxation is applicable, is merely arbitrary, and can never be sustained. This is not all. If the controlling power of the States be established; if their supremacy as to taxation be acknowledged; what is to restrain their exercising this control in any shape they may please to give it? Their sovereignty is not confined to taxation. That is not the only mode in which it might be displayed. The question is, in truth, a question of supremacy; and if the right of the States to tax the means employed by the general government be conceded, the declaration that the constitution,

and the laws made in pursuance thereof, shall be the supreme law of the land, is empty and unmeaning declamation."

And the argument was reinforced in *Osborn v. The Bank*, 9 Wheat. 862, where Mr. Chief Justice Marshall said:

"To tax its faculties, its trade, and occupation, is to tax the Bank itself! To destroy or preserve the one, is to destroy or preserve the other."

Upon the same principle, it was held in *Weston v. City Council of Charleston*, 2 Pet., 449, that the stock (that is, the bonds) of the United States could not be taxed by the States. The tax was found to be "a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution" (See also *Bank of Commerce v. New York City*, 2 Black, 620).

A similar ruling was made in *Bank v. Supervisors*, 7 Wall., 26, as to United States notes issued under the Loan and Currency Acts of 1862 and 1863. There, it was insisted that the notes were issued as money, and as this was their controlling quality, they were subject to taxation like coin issued under the same authority. In such a case it was recognized that Congress would have a discretion to determine whether State taxation of such a subject would injuriously affect the functions of the Federal Government. Mr. Chief Justice Chase said (pp. 30-31):

"It cannot be said, as we have already intimated, that the same inconveniences as would arise from the taxation of bonds and other interest-bearing obligations of the government, would attend the taxation of notes

issued for circulation as money. But we cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be enhanced by exemption from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption.

"There remains, then, only this question, Has Congress exercised the power of exemption?

"A careful examination of the acts under which they were issued, has left no doubt in our minds upon that point."

In *Thomson v. Pacific Railroad*, 9 Wall., 579, the question arose whether the property of the railway company, a *State corporation*, which was "entitled to certain benefits, and subject to certain duties under the legislation of Congress" was subject to a State tax. The Court held that it was. The Court thought there was "a clear distinction between the means employed by the government and the property of agents employed by the government," saying (p. 591): "Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means." (See, to the same effect, *National Bank v. Commonwealth*, 9 Wall., 353, 362.) And in the *Thomson* case, it was deemed "safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection" (*id.*, p. 591).

In *Railroad Company v. Peniston*, 18 Wall., 5, a tax by the State upon the real and personal property (as distinguished from its franchises) of the Union Pacific Railroad Company, a Federal corporation, was upheld. Mr. Justice Strong, with whom three Judges concurred, said (p. 36):

"It is, therefore, manifest that exemption of Federal agencies from state taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect. It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers."

Mr. Justice Swayne, concurring in the judgment (pp. 37, 38), thought that there was "no reason to doubt that it was the intention of Congress not to give the exemption claimed," adding:

"But I hold that the road is a National instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so. For some of the leading authorities in support of the principle involved in this view of the subject I refer to the *Chicago and Northwestern Railway v. Fuller* (17 Wall., 560), decided by this Court a short time ago."

(See also *California v. Pacific R. R. Co.*, 127 U. S., 1, 41.)

Adopting the same view, it was said by Mr. Justice Brewer, in delivering the opinion of the Court in *Reagan v. Mercantile Trust Co.*, 154 U. S., 413, 416, 417, as to the Texas and Pacific Railway, a Federal corporation, that "*conceding to Congress the power to remove the corporation in all its operations from the control of the State, there is in the act creating this company nothing which indicates an intent on the part of Congress to so remove it,*" and it was concluded that the corporation was "*as to business done wholly within the State, subject to the control of the State in all matters of taxation, rates, and other police regulations.*"

The result of the decisions was thus stated in *Central Pacific Railroad Co. v. California*, 162 U. S., 91, 125:

"It may be regarded as firmly settled that although corporations may be agents of the United States, their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Co. v. Peniston*. *Van Brocklin v. Tennessee*, 117 U. S., 151, 177.

"Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question. Congress did not see fit to do so here, and unless we are prepared to overrule a long line of well considered decisions the case comes within the rule therein laid down." (Italics ours.)

With respect to national banks, it has been held that their *personal assets* are exempt from State taxation. In *Rosenblatt v. Johnston*, 104 U. S., 462, this conclusion was reached with respect to

the personal property of an insolvent national bank which was in the hands of a receiver appointed by the Comptroller of the Currency under section 5234 of the Revised Statutes. The decision was placed upon the ground that the property in legal contemplation still belonged to the bank; that if the shares had any value they were taxable in the hands of the holders, under section 5219 of the Revised Statutes, but that the property in the hands of the receiver was "exempt to the same extent as it was before his appointment."

By reason of the policy and purpose of the National Bank Act it was said in *Mercantile Bank v. New York*, 121 U. S., 138, 154, that "neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States." It was added that it "was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by law." And in *Talbott v. Silver Bow County*, 139 U. S., 438, 440, it was said: "That shares of stock in a national bank are not subject to taxation without the consent of Congress is conceded." (See *People v. Weaver*, 100 U. S., 539, 543; *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283.)

As to national bank notes, Congress expressly provided by the act passed in 1894 (28 Stat., 278, c. 281) that the "circulating notes of national banking associations and United States legal ten-

der notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency and gold, silver or other coin," should be "subject to taxation as money on hand or on deposit under the laws of any State or Territory."

In *Owensboro National Bank v. Owensboro*, 173 U. S., 664, a suit brought to restrain the collection of alleged "franchise" taxes under an act of Kentucky, the Court said (through Mr. Justice White)—after referring to the principles established by the previous decisions (pp. 668, 669):

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, *were it not for the permissive legislation of Congress.*

"Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year, act of June 3, 1864, c. 106, 13 Stat., 99, power was granted to the States, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders.

"This section, then, of the Revised Statutes, *is the measure of the power of the State to tax national banks, their property or their franchises.* By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void." (Italics ours.)

(See also *First National Bank v. Albright*, 208 U. S., 548, 552, 553.)

In *Clement National Bank v. Vermont*, 231 U. S., 120, 135, it was held that with respect to the taxation of *depositors' credits*, the Federal statute does not prescribe a rule, and the property being normally subject to the State's taxing power, there was no warrant for implying a restriction which would extend beyond the requirements of protection from the prejudicial effect of such exactions as would be unjustly discriminatory.

The rule with respect to the taxation of Federal instrumentalities has had recent application in *Farmers etc. Bank v. Minnesota*, 232 U. S., 516, holding that a State may not tax bonds issued by a municipality of a territory, as such a tax was one upon the operations of the Government and not in any sense a tax upon the property of the municipality; and that "to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them." (*id.*, p. 526.) And in *Choctaw & Gulf R. R. Co. v. Harrison*, 235 U. S., 292, a tax upon the gross sales of coal from mines which the railroad company had leased from Indians, was held to be invalid, as it was a tax upon an instrumentality through which the United States was performing its duty to the Indians. (See also *Indian Territory Oil Co. v. Oklahoma*, 240 U. S., 522; *Bank of California v. Richardson*, 248 U. S., 476.)

In the present case, Congress has provided explicitly that "*every Federal Land Bank and every National Farm Loan Association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from*

Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act."

It is also provided that "*first mortgages*" executed to the Federal Land Bank, and "*farm loan bonds* issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

In view of these provisions, it is not necessary to discuss the question whether, or in what cases, there must be an explicit declaration by Congress in order to create an exemption from State taxation, either of the property held by Federal corporations, or of the shares or obligations issued by them. (See *Bank v. Supervisors*, 7 Wall., 26; *Thomson v. Pacific Railroad*, 9 Wall., p. 591; *Railroad Co. v. Peniston*, 18 Wall., pp. 37, 38; *Reagan v. Mercantile Trust Co.*, 154 U. S., pp. 416, 417.) Nor is it essential to consider to what extent action by Congress may be held, as it has been said, to permit State taxation. (See *Mercantile Bank v. New York*, 121 U. S., p. 154; *Owensboro National Bank v. Owensboro*, 173 U. S., 664.) Here, the exemption is given expressly.

If the subject of the exemptions is deemed to be so intimately and unquestionably related to the operations of the Federal agency as to be inherently exempt, the action of Congress is merely declaratory. And, if the case is one in which Congress can be said to have discretion, certainly Congress has exercised it. From every point of

view, the exemption is a valid one. Congress has complete power to protect the Federal Land Banks as Federal corporations, and the Farm Loan Bonds as securities issued by these corporations under the authority of Congress, from State taxation.

With respect to the exemption of the Farm Loan Bonds issued by the Federal Land Banks from Federal taxation, it is sufficient to say that Congress pledges this immunity and to the extent that these bonds are accepted and paid for in reliance upon this stipulation it would be a gross violation of faith to repudiate it. Further, this provision of the Act accepted by the taking and paying for the bonds, constitutes an agreement supported by consideration which would be valid and binding. In view of the broad authority of Congress in matters of taxation, it is submitted that Congress has ample power to make this provision for exemption—a power similar to that which has been recognized as belonging to the States. (See *Home of the Friendless v. Rouse*, 8 Wall., 430; *Farrington v. Tennessee*, 95 U. S., 679.)

As was said by the Supreme Court of the United States in the *Sinking Fund Cases*, 99 U. S., 700, 718, 719: “The United States cannot any more than a State interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States they are prohibited from depriving persons or corporations of property without due process of law. . . . The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong

and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen." So, referring to legislation with respect to certain railroads, the Supreme Court said in *United States v. Central Pacific R. R. Co.*, 118 U. S., 235, 238: "These sections" (referring to the applicable Act of Congress) "taken together, constitute the contract between the United States and the appellee. . . . This contract is binding on the United States, and they cannot, without the consent of the company, change its terms by any subsequent legislation. *Sinking Fund Cases, ubi supra.*"

Relying upon the immunity from taxation expressly conferred by Congress, and the validity of the securities, investors have purchased the Farm Loan Bonds issued by the Federal Land Banks under the direction of the Federal Farm Loan Board to the extent of over \$150,000,000. The appellant assails these existing securities. The attack cannot be sustained by doubts, for mere doubts must be resolved in favor of the validity of Congressional action. It is incumbent in a challenge of this most serious character for the appellant to establish its contention by reasoning so conclusive as to admit of no reply. Instead of sustaining this burden, the argument for the appellant runs counter to principles that have been established since the days of Marshall and to a weight of opinion in and out of Congress which is sufficiently indicated by the fact that three and a half years have elapsed since the passage of the Act, that Congress, in pursuance of its pledge, has repeatedly in Income Tax Acts exempted the Farm Loan Bonds, and that the States

throughout the country have recognized the exemption from local taxation.

The decree of the District Court dismissing the bill should be affirmed.

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JAMES D. M.

IN THE
Supreme Court of the United States

October Term, 1920

CHARLES E. SMITH, *Appellant*,
against

KANSAS CITY TITLE AND TRUST COMPANY,
FEDERAL LAND BANK OF WICHITA, KANSAS,
AND FIRST JOINT STOCK LAND BANK OF
CHICAGO, ILLINOIS,
Appellees.

No. 199

BRIEF FOR APPELLEE, FEDERAL LAND
BANK OF WICHITA, KANSAS

W. W. WILLOUGHBY,
*Of Counsel for Appellee, Federal Land
Bank of Wichita, Kansas.*

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No. 199

Appeal from the District Court of the United States for the
Western Division of the Western District of Missouri

**BRIEF FOR APPELLEE, FEDERAL LAND BANK OF
WICHITA, KANSAS**

The provisions of the Federal Farm Loan Act of July 17, 1916, as amended by the Act of January 18, 1918 are sufficiently set forth in the other briefs filed in this case and will not, therefore, be here given.

This brief is concerned with the constitutionality of the Acts of July 17, 1916, and January 18, 1918 in so far as they relate to the Federal Land Banks. It is not concerned with the provisions relating to the Joint Stock Land Banks, which provisions are clearly "separable" from those relating to the Federal Land Banks. Indeed, Section 34 of the Act expressly provides for this.

Governing Propositions of Constitutional Law.

At the outset certain constitutional doctrines may be stated which, it is believed, will not be contested by counsel for the Appellant nor questioned by the Court. In the argument which follows it will be shown that these doctrines, if given their full and proper application, amply uphold the validity of the provisions which Congress has made for the establishment of the Federal Land Banks, and for the exemption of their bonds from federal, state, municipal and local taxation as declared in Section 26 of the Act of 1916.

The constitutional doctrines to which reference has been made are so well established, and have been so frequently applied, that it will not be necessary to burden the brief, or tax the patience of the Court, with numerous citations of cases. The doctrines are as follows:

1. The question of the validity of an Act of Congress is solely one of constitutional power. This granted, considerations of expediency, of motive, or of results effected in fields not primarily subject to federal regulation, become irrelevant.

2. If an instrumentality or mode of regulation can be reasonably regarded as efficient to carry out, or in any wise to aid in carrying out, a valid purpose of Congress, its constitutionality will be upheld.

3. In determining the fact whether a given instrumentality or mode of regulation is calculated to aid in carrying out a valid purpose of Congress, the Courts will be governed by the judgment of Congress if it can be made to appear that the instrumentality or the mode of regulation can conceivably, that is, to the mind of a rational man can reasonably, be regarded as calculated to aid in the carrying out of the legislative will.

4. A federal agency is not subject to taxation by a state or by any of its political subdivisions, except with the permission of Congress.

5. Congress has the power to give financial aid to any undertaking that will promote the "general welfare" of the American people. This condition is satisfied if the purpose is general and public in character. The fact that particular individuals or localities may incidentally receive special benefit from the financial aid thus given is not material, if the end sought, or to be expected, is one of general interest. Federal aid may be extended in the form of moneys directly appropriated, of exemption from federal taxation, or of a loan of federal credit. In each case the assistance is financial and may fairly be considered as equivalent to an appropriation of money.

PURPOSES OF THE ACT OF 1916

The purposes of the Act of July 17, 1916 are truly set forth in its title, and, as enumerated, show that Federal Land Banks are intended by Congress to serve two purposes, both of which are within the acknowledged powers of Congress. These two functions which the Banks are to exercise are:

I. *To serve as federal financial agencies*

- (a) to furnish a market for United States Government bonds,
- (b) to provide depositaries for Government moneys, and
- (c) to serve, generally, when needed, as financial agencies of the National Government.

II. *To appropriate money in order to promote agriculture throughout the Union*

- (a) by furnishing capital for agricultural development,
- (b) by creating standard forms of investment based upon farm mortgages, and
- (c) by equalizing rates of interest upon farm loans.

The power to promote the agricultural interests of the country has not been given to Congress by the Constitution in express terms. It is, however, too clear for argument, that the "general welfare" of the people is promoted by any measure which tends to render more efficient, throughout the Union, the carrying on of farming, by assisting the farmers to secure the means whereby they may bring new lands under cultivation or make better and more intensive use of lands already cultivated. Congress, therefore, clearly has the constitutional power to make such appropriations as are provided in the Federal Farm Loan Act, to authorize the investment of federal funds, to the extent that may be needed, in the capital stock of the Federal Land Banks, and to give further federal assistance in the form of the tax exemptions provided for in Section 26 of the Act. The tax exemptions thus rest upon a double constitutional basis: as a mode of extending federal financial aid under its appropriating power to an undertaking that will advance the "general welfare" of the people; and as a means of rendering more efficient, and protecting from possible State interference, a federal financial agency.

Functions of the Banks Primary in Character.

It will be observed that this grouping of the purposes of the Farm Loan Banks into two classes is not one which attempts or admits a distinction between the primary and incidental purposes of the banks. This distinction has no application so long as the Federal Government lends its financial aid in the form of grants of money or credit, special exemption from taxation or otherwise with a view to promoting agricultural interests of the country. For, so long as this is the case, the Banks serve as federal governmental agencies for applying effectively and economically, the federal financial aid that has been extended, just as much as they serve as governmental agencies for the depositing of public funds, the furnishing of a market for government bonds, and for the performance of any other financial function that may be entrusted to them.

Irrelevancy of Arguments as to Nature of Banks.

It will further appear from what has been said that the argument of Counsel for the Appellant that the Federal Land Banks are not, properly speaking, banks at all, in a proper sense of the word, is irrelevant. For, if it should be admitted, *arguendo*, that this is so, it would still remain a fact that the "Banks" are financial agencies for carrying into effect constitutional purposes of the National Government. In other words, the Appellees need rely upon the cases upholding the constitutionality of the National and Federal Reserve Banks only insofar as they lay down the broad principle that in carrying out a constitutional purpose Congress has a choice of means and may create, and protect from possible state

interference by taxation or otherwise, agencies equipped with such powers as will enable them to operate efficiently as federal governmental instrumentalities.

Continuing and Permanent Functions of the Banks to Serve as Financial Agencies of the Government.

If it be argued that the time will come, and is, indeed, foreseen and provided for in the Act itself, when the United States Government will no longer have any of its funds invested in the capital stock of the Banks or in their bonds, and that the Banks will then no longer serve as agencies for applying and administering direct federal financial aid, three sufficient replies may be made.

In the first place, such a situation has not yet arisen and therefore no argument applicable to the case at bar, can be predicated upon it.

In the second place the system of Banks will still serve as the instrumentality which the National Government has created and employs for the purpose of providing that funds will be made available for promoting the agricultural interests of the country. In this connection it will be noted that the resources of the Banks, obtained through their bonds, are to be devoted exclusively to this purpose, and that any profits that may be earned by the Banks return into the hands of the borrowers upon the farm mortgages who will be the sole owners of the shares of the Banks.

In the third place, waiving these answers, the Banks will continue to operate as federal agencies for the custody of public funds, for providing a market for federal government bonds, and for performing such other financial functions as may be imposed upon them.

The function of the Banks as financial agencies of the

National Government is a continuing and permanent one. This will continue to be, in contemplation of the law, their primary and constitutional function; and, if it be necessary to do so, it can be safely asserted that their activities as agencies for lending money on farm mortgages and securing money for such loans by the issuance of bonds are incidental thereto. The constitutionality of these activities as incidental is defensible upon exactly the same grounds as those that have upheld the power of the National Banks to engage in a general banking business for the private profit of their stockholders. There is no functional or organic connection between the general banking business which the National Banks are permitted to carry on, and their financial services to the Government. But, as the Court has held, it is not possible, as a practicable proposition, that the National Banks should exist and thus be able to perform their primary governmental functions, unless they were vested by Congress with the incidental power to do a general banking business for the private profit of their stockholders. And it has recently been held that they may even act as trustees, executors, administrators of private property or estates, or as registrars of stocks and bonds. (*First National Bank v. Union Trust Co.*, 244 U. S. 416.) In exactly the same way, it is proper and necessary that the Federal Land Banks should have the power to make loans to farmers secured by mortgages upon farm land, and to secure the funds for such purpose by issuing bonds secured by the mortgages thus acquired. The activities of the Farm Loan Banks in this respect are indeed complementary to those of the National Banks, these latter providing commercial credits (until the Federal Reserve Act of 1913 the National Banks were not permitted to loan money upon real estate security, and even now may

make such loans on farm lands for no longer than five years, and to an amount not greater than twenty-five per cent of capital and surplus or one-third of their time deposits), the Federal Land Banks providing agricultural credits.

In connection with the function of the Banks as financial agencies of the Government it will be noted that the Banks are obligated by Section 5 of the Act of 1916 to invest at least one-fifth of their quick assets in Government bonds and that the Secretary of the Treasury is expressly authorized (Section 32) in his discretion, upon the request of the Federal Farm Loan Board, to make deposits of public funds in the Banks. Furthermore, the Act (Section 6) authorizes the Banks to be employed as "financial agents of the Government," and they are obligated to "perform all such reasonable duties, as depositories of public money and financial agents of the Government, as may be required of them."

Potential Value of the Banks as Financial Agents of the Government.

This provision in general terms, without limitations as to specified purposes, that the Banks may be employed as financial agents of the National Government and that, when so employed, they shall be obligated to perform all reasonable duties as such, is of very great constitutional importance. From this provision it appears in express terms that Congress has deemed it wise that these institutions shall be in existence, which, as occasion or need arise, may be instantly used by the National Government for its financial purposes. Thus, for example, during the summer of 1918, while the war was in progress, it was deemed desirable that seed-grain loans should be made to farmers in certain sections of the

country suffering from drought. The Farm Loan Banks of Wichita, St. Paul and Spokane were at once seized upon as convenient instrumentalities through which this aid might efficiently and economically be extended, and something like fifteen thousand such loans were thus made. This federal service the banks performed without expense to the National Government beyond actual expenses incurred.

This incident, important in itself, is still more important as an illustration of the advantage to the National Government, and therefore the constitutional justification, in having in existence and full operating efficiency, instrumentalities that may instantly be availed of when need or convenience arises. A striking demonstration of this was the tremendous value to the Government, when it entered the war against Germany, of having the Federal Reserve Banking and the Federal Income Tax Systems in existence and operation. It became necessary at once, not only to raise vast sums by popularly subscribed loans, but to multiply many times the ordinary revenue of the Government. The fact that a federal income tax had been in existence for a number of years, and an elaborate system built up for its administration, enabled the Government without delay greatly to increase its income from taxes simply by changing the rates of the tax. The Federal Reserve System that had been established and was in full working order, became immediately the efficient agency through which not only were billions of credit secured by the Government, but the banks throughout the country enabled to advance liberal credits to individuals desiring to subscribe for the Liberty and Victory bonds of the Government. It is, indeed, difficult to conceive how the Federal Government could have been able to meet the enormous financial

tasks imposed upon it during the war had it not had at hand these two instrumentalities. And thus, by analogy, it can be seen of what potential value it may be to the Government, to have in existence a system of Federal Land Banks which may be used as occasion or exigency may arise. Little force is, then, to be attached to any argument against the constitutionality of the banks based upon the comparative importance in the past or present of activities of the banks as federal financial agents as compared with their function of supplying loans secured by farm mortgages. Congress has declared that, in its opinion, it is wise to have these banks in existence, and ready to serve, when needed, as fiscal agencies of the Government, and that would seem to be decisive.

Distinction Between Primary and Incidental Powers is not, Constitutionally, Quantitative in Character.

In truth, moreover, even were regard not had for the potential value to the Government of the Federal Land Banks, there would still remain the fact that the distinction between the primary and incidental functions of a government agency is not a quantitative one. That is to say, it cannot properly be argued that, because, for the time being, or even as a permanent proposition, one branch of the work of an agency is, economically or socially, more important than the other, therefore, the more conspicuous activity is, from the constitutional point of view, its primary function, and the other merely incidental thereto. If an instrumentality serves as an agency of the Government for carrying out one or more of its constitutional powers, that service constitutes, from the constitutional point of view, its primary purpose, even though, if regarded from any other than gov-

ernmental point of view, its other activities are far more extensive. Upon this point the holding of the Court in *McCray v. United States* (195 U. S. 27) is sufficient. In that case it was argued that a federal excise tax of ten cents a pound upon oleomargarine artificially colored to resemble butter (no tax being laid upon natural butter) was unconstitutional because the tax was so high as to be practically prohibitive to the manufacture and sale of oleomargarine; that this was known to Congress; that, therefore, it could not have been the primary purpose of Congress, by enacting the law, to obtain a revenue for the Government, but that, instead, the motive was to protect the dairy interests of the country against the competition of oleomargarine manufacturers. There was, in fact, no question but that the act would have far greater effect in this respect than as a producer of revenue for the National Government. The Court, however, finding, as it was obliged to do, that the act was a veritable excise measure and as such within the constitutional power of Congress to enact, declared that it would be inappropriate upon the Court's part to estimate how important the act would prove as a revenue measure and, from that fact, to determine the motive of Congress in its enactment. Indeed, the motive of Congress could not be judicially inquired into at all. The only question to be considered, the Court held, was whether the charge provided for was in its nature a tax and, as such, levied in conformity with the requirements of the Constitution. This determined affirmatively, the constitutionality of the act was established.

In the earlier case of *Re Kollock*, (165 U. S. 536) Mr. Chief Justice Fuller, speaking for a unanimous court, had said: "The act before us is, on its face an act for levying taxes, and although it may operate in so doing

to prevent deception in the sale of oleomargarine as and for butter *its primary object must be assumed to be the raising of revenue.*" And, as the Court said in the McCray case, after quoting this statement, it was not necessary to go beyond this, but that it would further extend its opinion only in deference to the earnestness with which counsel had assailed the validity of the act. To the argument that the judiciary might interfere when, in its opinion, one of the other departments of Government had exerted its lawful powers to attain an end not within the scope of federal authority, the Court, in emphatic language said: "The proposition, if sustained, would destroy all distinction between the powers of the respective departments of the Government, would put an end to that confidence and respect for each other which it was the purpose of the Constitution to uphold, and would thus be full of danger to the permanence of our institutions."

Judged from this point of view the constitutionality of the Federal Farm Loan Act rests upon a firmer basis, and is further removed from possible scrutiny as to its major purpose, or its primary end, than were the acts involved in the McCray case, for already the Banks have served a valuable purpose as financial agencies of the Government, and their potential future value as such may easily be very great indeed.

In result, then, we come to this: If Congress has made provision for the creation of certain agencies, which it declares to be federal governmental agencies and, as such, subjects them to vigorous control and supervision, and if, in fact, it has made use of them as such, then, constitutionally speaking, that is their primary function, and it only remains to determine whether the other functions exercised by them as such are properly incidental

thereto. When thus regarded, the doctrines laid down in the National Bank cases are decisive, for, it will scarcely be denied that to even a greater extent than is the case with regard to the doing of a general banking business by the National Banks, in order that they may exist and efficiently perform their primary governmental functions, it is necessary that the Federal Land Banks should have and exercise the powers given to them with regard to the making of loans and the issuance of bonds to secure the funds for such loans, in order that they may exist.

The determining force that is to be ascribed to a declaration of Congress that certain incidental powers need to be possessed by its agencies in order that they may function as such, is shown in the following cases. In *Osborn et al. v. The Bank of the United States* (Cf. Wh. 739), Chief Justice Marshall, speaking of the private banking functions of the Bank, said: "Congress was of opinion that these facilities were necessary to enable the bank to perform the services which are exacted of it, and for which it was created. This was certainly a question proper for the consideration of the national legislature." So, in the present case, Congress has exercised a proper discretionary right in determining the activities that the Federal Land Banks may exercise in order that they may serve as agencies of the Government.

In *First National Bank v. The Union Trust Co.* (244 U. S. 416) the Court below had argued that while there might be a connection between the business of banking and the carrying on of federal fiscal operations, there was none, apparently, between such operations and the business of settling estates or acting as the trustees of bondholders. To this the Supreme Court replied: "But we are of opinion that the doctrine thus announced not

only was wholly inadequate to distinguish the case before us from the rulings in *McCulloch v. Maryland* and *Osborn v. Bank of United States*, but, on the contrary, directly conflicted with what was decided in those cases." The lower court, it was declared, had disregarded the discretion of Congress and had improperly exercised its judicial discretion "for the purpose of determining whether it was relevant or appropriate to give the bank the particular functions in question."

The constitutionality of the Federal Land Banks being established as agencies of the Federal Government, it follows, as a matter of course, that they, and the means which they employ—their bonds and mortgages and the income therefrom—are exempt from State, municipal or local taxation except with the permission of Congress. So far from granting this permission, Congress has expressly denied it, and, furthermore, has declared that these mortgages and bonds are to be deemed and held to be "instrumentalities of the Government." It is not here contended that Congress can arbitrarily and conclusively, by a mere fiat, transmute a private into a governmental instrumentality. But when it makes an express declaration that a given instrumentality is to be deemed and held to be a governmental one, that declaration may not properly be disregarded if there is any rational ground whatever for, that is, any possible view in reason which will support, such a declaration. In fine, the declared opinion of the legislature as to this is almost, if not absolutely, conclusive upon the other departments of Government.

W. W. WILLOUGHBY,
*Of Counsel for Appellee, Federal Land
 Bank of Wichita, Kansas.*

Appellee.



Farm Loan Case.

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JAMES D. WAHE

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October Term, 1920.

CHARLES E. SMITH,

Appellant,

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KANSAS CITY TITLE AND TRUST COMPANY,

et al.,

Appellees.

No. 199

**BRIEF ON BEHALF OF FIRST JOINT STOCK
LAND BANK OF CHICAGO, INTERVENOR-
APPELLEE.**

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IN THE
Supreme Court of the United States
October Term, 1920.

CHARLES E. SMITH,
Appellant,
against
KANSAS CITY TITLE AND TRUST COMPANY,
et al.,
Appellees.

No. 199.

**BRIEF ON BEHALF OF FIRST JOINT STOCK
LAND BANK OF CHICAGO, INTERVENOR-
APPELLEE.**

Statement.

Appeal from a final decree of the District Court of the United States for the Western Division of the Western District of Missouri, dismissing a bill of complaint for want of equity (Record, p. 30).

This appeal involves the constitutionality of the Federal Farm Loan Act, approved July 17, 1916 (39 Stats., p. 360), as amended by an act approved January 18, 1918 (40 Stats., p. 431), and particularly of Sections 26 and 27 of said Act (39 Stats., p. 380),¹ in so far as it authorizes the organization of two classes of banks, viz.: Federal Land Banks and Joint Stock Land Banks, the issuance of bonds by them, and the exemption of said bonds from taxation.

¹Also as further amended by Act approved April 20, 1920, Public No. 182 (affecting Sec. 3, ¶7, Sec. 10, ¶1, Sec. 11, ¶3, Sec. 12, ¶3, Sec. 20, ¶3), and by Act approved May 29, 1920, Public No. 232 (amending Sec. 16).

The case involves the validity of \$17,502,667.50 of stock and \$152,495,000 of bonds, issued by the Federal Land Banks, and \$83,527,000 of stock and \$60,089,000 of bonds issued by Joint Stock Land Banks, all outstanding in the hands of the public, as well as of \$6,832,680 of stock and \$175,000,000 of bonds issued by Federal Land Banks and held in the United States Treasury.

The bill of complaint (Record, pp. 1-18) was filed by plaintiff, a stockholder in the Kansas City Title and Trust Company, a trust company organized under the laws of Missouri, to enjoin it from purchasing for investment pursuant to resolution of its Board of Directors, certain Federal Land Bank bonds and Joint Stock Land Bank bonds, upon the ground that the said bonds and the tax exemption features thereof were invalid, unlawful and unconstitutional. By proper proceedings, the Federal Land Bank of Wichita, Kansas, was permitted to intervene on behalf of itself and all other Federal Land Banks (Rec., p. 20), the First Joint Stock Land Bank of Chicago, Illinois, was permitted to intervene in behalf of itself and all of the other Joint Stock Land Banks (Rec., p. 19); and the United States was heard as *amicus curiae* (Rec., p. 34). By consent of all parties the bill was amended by interlineations, which amendatory matter, it was agreed, should at all times and under all circumstances be treated as if in the original bill as and when filed (Rec., p. 31). The defendant Trust Company moved to dismiss the bill for want of equity (Rec., p. 21). The United States and each of said intervenors, to speed an early disposition of the cause, adopted as their own and were heard upon the defendant's motion to dismiss (Rec., p. 31). After two days' argument before VAN VALKENBERG, J., the motion was granted and a final decree was entered, from which plaintiff was allowed to appeal (p. 31). The case was advanced in this Court and was argued

orally at the bar and submitted on January 6, 7 and 8, 1920.

On April 26, 1920, the Court ordered the cause restored to the docket for reargument, and subsequently set it down for hearing on October 11, 1920.

Case Made by the Bill of Complaint.

The bill shows that since the passage of the Farm Loan Act, the United States has been divided, pursuant to its provisions, into twelve Land Bank Districts, in each of which one Federal Land Bank has been organized, and that up to July 1, 1919, these twelve banks have issued capital stock to the aggregate amount of \$8,892,130, of which, stock to the amount of \$8,265,809 is held by the Treasury Department of the United States; that up to September 30, 1919, said Federal Land Banks have issued Farm Loan bonds to the amount of \$285,600,000, of which about \$135,000,000 have been purchased and are held in the Treasury of the United States; that up to September 30, 1919, twenty-seven Joint Stock Land Banks had been incorporated under the Act, with an aggregate capital of \$8,000,000, all of which had been subscribed and \$7,450,000 paid in, and that said Joint Stock Land Banks have issued, under the provisions of the Act, Farm Loan bonds to the aggregate amount of \$41,000,000, which are now outstanding in the hands of the public (Rec., pp. 9-10).²

The bill further shows that the Federal Land Banks on September 30, 1919, were the owners of United States bonds to the par value of \$4,230,805 and that the Joint Stock Land Banks, on August 31, 1919, were the owners of United States bonds to the par value of \$3,287,503 (Rec., p. 9): that pursuant to the provisions of Sec. 32 of the

²As shown by Exhibits C and D of the Appendix (pp. 112, 113) these amounts have been varied since the bill was filed. The present figures are given accurately on page 2 (*supra*).

Federal Farm Loan Act, as amended in 1918, the Secretary of the Treasury made certain deposits for the temporary use of the Federal Land Banks, out of moneys in the Treasury, a statement whereof is set forth on page 8 of the Record, for which said banks issued their respective certificates of indebtedness bearing 2 per cent. interest per annum (Rec., p. 8).

That during the summer of 1918, the Federal Land Banks of Wichita, St. Paul and Spokane, respectively, were designated as financial agents of the Government for the making of seed grain loans to farmers in drought stricken sections, the President having set aside \$5,000,000 for that purpose out of his \$100,000,000 war fund. That the three banks mentioned had made upwards of 15,000 loans of said character, aggregating upwards of \$4,500,000, all of which were secured by crop liens and that the said banks were now engaged in collecting said loans. That the said banks acted in the matter without compensation. That up to the time of filing the bill of complaint, the Secretary of the Treasury had not designated any of the Federal Land Banks, or Joint Stock Land Banks as depositaries of public moneys, nor, except as above stated, had they or any of them performed any duties as depositaries of public money or as financial agents of the Government (Rec., p. 10). Averring that the officers of the Trust Company proposed to deal with its moneys Farm Loan Bonds issued by each class of the Land Banks above described "solely because of its belief in (a) the validity of said bonds, and especially (b) in the exemption thereof from all forms of taxation"; that the acts of Congress under which said bonds were issued were unconstitutional and that said bonds, if purchased, would be subject to taxation, despite the exemption in the act of Congress, plaintiff as a stockholder of the Trust Company brought this suit to restrain the alleged unlawful application of its funds (Rec., pp. 15-17).

The Court (VAN VALKENBERG, J.), at the close of the arguments, delivered an oral opinion (Rec., pp. 22-30) in which he sustained the Constitutionality of the Act in all respects, as to both classes of Land Banks, and therefore ordered that the bill be dismissed for want of equity.

The Federal Farm Loan Act.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

"An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

A summary of its provisions is annexed to this brief as a part of the Appendix, marked A.

Purpose of the Act.

The title of the Act clearly indicates its purpose. The first object expressed is "*to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage.*" The great need for this, the vital importance to the nation of its accomplishment, and the inadequacy of the machinery and resources of the national banks and the Federal Reserve Banks to supply this want without crippling them in their primary function of providing the credits required in the commercial and industrial business of the nation, and the intimate relation of this problem to the fiscal requirements of the Government, hardly need exposition, but will be indicated in the following portions of this brief.

The next object stated is,

"to equalize rates of interest based upon farm loans,"

or, it might be more accurately expressed, to relieve the requirements of agricultural credit from the burden of existing extortionate rates of interest and the exactions of loan brokers, thus eliminating usurious payments on loans—one of the ends Hamilton sought to accomplish in the establishment of the First Bank of the United States, to the great improvement of public credit.

The chief purpose of the Federal Reserve Act was as stated by the Committee in reporting it to the U. S. Senate,

*"to give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies, make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business to the extent of their just deserts * * *"* (S. Rep., No. 133, Part I, 63rd Cong., 1st Sess.).

No one questions that these purposes are within the powers of Congress to accomplish. Can it be any the less within its power to give stability to commerce and industry by making effective commercial credit for individuals engaged in *agriculture*; to prevent financial stringency by protecting those engaged in that vast industry from extortionate rates of interest, and terms of credit which require repayments of loans on conditions which mature the principal of large amounts at one time, when money may be scarce and interest rates high?

The next, is

"to furnish a market for United States bonds, to create Government depositaries and financial agents of the United States."

These are purposes obviously within the borrowing powers of Congress.

And finally,

for other purposes."

All these as will appear from a perusal of the Act, are germane to the particular purposes expressed in the title.

To effectuate them, Congress erects a bureau in the Treasury Department of the United States, clothed with power to carry out the provisions of the Act.

It then provides for two methods of providing the credit required in aid of agricultural development; (1) a co-operative system of borrowers' associations operating through Farm Loan Banks, for which banks the Government, in the first instance, is to furnish the necessary capital, to be gradually withdrawn and replaced by private investment, and (2) Joint Stock Land Banks, organized on the model of the National Banks, whose capital is to be furnished entirely by private subscription.

Both of these classes of institutions operate under the direct supervision and control of the Government, acting by the Farm Loan Board. The Act looks to their acquisition of Government bonds as a necessary result of their operations, and avails of their machinery for certain other purposes useful in the conduct of the fiscal operations of the United States.

In order to ensure the success of the purposes of the Act, both classes of banks, the bonds issued by them and the farm mortgages in which they are to deal, are exempted from State and Federal taxation, although the capital stock of the Joint Stock Land Banks is made subject to State taxation, in the same manner and with the same limitations as shares in National Banks.

No Opposition to This System Has Come from Any State.

On the contrary, wherever a State has acted respecting the Federal Farm Loan System, it has been to express approval and give co-operation to it.

Thus, many states by express legislation have made Farm Loan Bonds lawful investments for public and trust funds.

See laws of

Alabama,	Chap. 346	Laws of 1919	
California,	Chap. 180	" "	1919
Florida,	Chap. 7391	" "	1917
Georgia,	Page 160	" "	1918
Idaho,	Chap. 10	" "	1917 (limited)
Massachusetts,	Chap. 67	" "	1918 "
Maine,	Chap. 45	" "	1917
Minnesota,	Chap. 88	" "	1917 (limited)
Nebraska,	Chap. 190, (p. 720)	" "	1919
New Jersey,	Chap. 36	" "	1917 (limited)
No. Carolina,	Chap. 83	" "	1919
Ohio,	Page 147	" "	1917
Texas,	Chap. 63	" "	1917
Vermont,	Chap. 136	" "	1919 (<i>semble</i>)
Wisconsin,	Chap. 630	" "	"
Wyoming,	Chap. 58	" "	"

Some states have expressly exempted either farm loan investments, or specifically, Federal Farm Loan Bonds "issued under the provisions of the Federal Farm Loan Act of July 17, 1916," from taxation, income or other State taxes. This specific exemption appears in the New York Income Tax Law of 1919 (Tax law Sec. 359) and the Alabama Income Tax law of 1919 (Chap. 328) also North Dakota (Chap. 224 of Laws of 1919) New Mexico (Chap. 123 of laws of 1919) *semble*.

This legislation is especially important because it thus

clearly appears that, so far from the states objecting to the Farm Loan System and the Farm Loan Bonds as an invasion of states' rights, to the extent that they have acted, they have recognized the benefit of the system and are attempting to help it. These statutes are also important in that they indicate that in certain states the point as to the validity of the exemption of the Farm Loan Bonds from state taxes already has been settled against the plaintiff in this cause by an authority that he cannot consistently question, *i. e.*, the state itself.

Practical Effect of Appellant's Contention.

This suit directly challenges the validity of hundreds of millions of dollars in securities which have been issued under the direction of the Treasury Department of the United States, in exact conformity with the requirements of an Act of Congress. Every one of the bonds bears the representation that it has been so issued and that such security "*and the income derived therefrom shall be exempt from Federal, State, Municipal and Local Taxation,*" and these securities were purchased by the investing public in reliance upon such representation.

We do not know of any case which ever has come before this Court directly involving the possible destruction of such great values.

The bill strikes at the very root of the whole Farm Loan system. It not only questions the validity of the tax exemptions, but the enforceability of the bonds themselves. It is true that during the oral argument at the last term, counsel for Appellant, probably horrified at the possible consequences of his contention, stated that he only sought to have the tax exemption declared illegal. But his printed argument seeks to involve this entire volume of investment in which the public has put so great a part of its savings,

in one sweeping taint of illegality. The brunt of the attack is directed against the Joint Stock Land Banks, for the loan sharks and rural credit concerns which for so long a time have been fleecing the farmers read their doom in the success of these institutions; but the printed argument of Appellant strikes as well at the Federal Land Banks, in which the United States is but a temporary stockholder, and whose constitutionality depends upon exactly the same basis as that of the Joint Stock Banks.

POINT I.

The Joint Stock Land Banks, represented by the First Joint Stock Land Bank of Chicago, intervenor in the Court below, unite with the appellant in urging the consideration and decision of this case on the merits. They concur in the argument made by appellant that these proceedings are such that the validity of the law can and should be decided by this Court.

It is significant that the challenge to the constitutionality of the Farm Loan Act, and especially to the validity of the exemption of Farm Loan Bonds from taxation, comes *not from any public authority*. No state, no political subdivision of a state, no national authority is here objecting to the exercise by Congress of the power of creating and protecting this new system of financial agencies. The attack comes ostensibly from a stockholder of a Kansas City trust company, fearful of the possible loss of money proposed to be invested in Farm Loan Bonds! Obviously, the actual attack comes from some much more interested source. The farm mortgage brokers and the insurance and financial companies who have

been reaping unconscionable profits from the business of lending to farmers, naturally are concerned to prevent, if they can, the success of these new agents. But notwithstanding the source, the banks in the system could not suffer the attack to go undefended. Credit is highly sensitive, and once a suit was brought seriously questioning the validity of the Act, the banks deemed it necessary to intervene and to defend.

The court will readily understand that the pendency of this suit, with the cloud upon the validity of the securities which the postponement of its decision by this Court has involved, interposes a very serious obstacle to the successful functioning of the Farm Loan system. Not only is a cloud cast upon the marketability of the great volume of securities which already has been issued, but naturally, nobody is anxious to purchase new securities whose validity is under challenge in the court.

For this reason, we respectfully urge the Court to consider on the merits and definitely determine the validity of the securities involved and their exemption from taxation. The propriety of the procedure adopted would seem to be settled in *Brushaber v. Union Pacific Railroad Co.*, 240 U. S., 1.

POINT II.

There is no essential difference between the Federal Land Banks and the Joint Stock Land Banks so far as Congressional authority for their creation is concerned.

It is true that the initial capital of the Federal Land Banks was furnished by the government, but this is rapidly being taken up by private parties. It is also true that the government has purchased and holds a certain amount of Farm Loan Bonds issued by the Federal Land

Banks. This, too, is a temporary circumstance. While the capital of Joint Stock Land Banks is furnished by private subscription, and the bonds issued by them may not be purchased directly by the government, these bonds are made lawful investments for all fiduciary and trust funds, may be accepted as security for all public deposits; any member bank of the Federal Reserve System may buy and sell Farm Loan Bonds issued by both classes of banks, and any Federal Reserve Bank may buy and sell Farm Loan Bonds issued by both classes of banks to the same extent and subject to the same limitations placed upon the purchase and sale by State banks of State, County, District or Municipal bonds under the Federal Reserve Act. (See Sec. 27.) The Joint Stock Land Banks are subject in their operations to close supervision and control by the United States Treasury Department, acting through the Federal Farm Loan Board. Indeed, there is scarcely a detail of supervisory power vested in that Board over the Federal Land Banks which is not equally applicable to the Joint Stock Land Banks.

The differences between the statutory provisions applicable to the two classes of banks are, in matters of detail, not of fundamental principle.

(1) Thus while the Federal Land Banks may issue Farm Loan Bonds to an amount of twenty times their capital and surplus, the Joint Stock Land Banks are limited to an amount not exceeding fifteen times their capital and surplus. All Federal Land Banks are jointly and severally liable for the payment of all bonds issued by any one of said banks. No Joint Stock Land Bank is liable for the bonds of any other such bank, but, on the other hand, its stockholders are liable for the debts of the bank to an amount equal to their capital.

(2) Loans made by Joint Stock Land Banks are not restricted to the purposes specified in paragraph fourth

of Section 12 of the Act. On the other hand, alike with loans made by Federal Land Banks, they must be secured by first mortgage on farm lands, although these lands must be located within the State in which the bank has its principal office, or within some one State contiguous thereto. The loan may not exceed fifty per cent. of the value of the mortgaged land and twenty per cent. of the insurable improvements, as ascertained by the appraisers of the Farm Loan Board. These banks are not subject to the limitations of paragraph sixth of Section 12, that the loan can only be made to a person actually or shortly to become engaged in the cultivation of the farm mortgaged, nor to the limitation that the amount of loans to any one borrower shall in no case exceed a maximum of \$10,000, nor need a borrower in such cases be required to enter into an agreement that the whole or any portion of his loan shall not be expended for purposes other than those specified in his original application. But on the other hand, like the Federal Land Banks, the Joint Stock Land Banks cannot charge interest on loans made on mortgage by them at a rate exceeding six per cent. per annum, exclusive of amortization payments, nor can they charge interest at a rate more than one per cent. greater than the interest on the last series of Farm Loan Bonds issued by them, and they are forbidden in any case to demand or receive under any form or pretense any commission or charge not specifically authorized by the Act. They are subject to the same requirements as the Federal Land Banks, that before any mortgage loan is made by them, the application for the loan, together with a written report, signed by its Loan Committee, must be submitted to the Farm Loan Board, and referred to appraisers appointed by it. No loan may be made except on the favorable report of such appraisers. The Federal Farm Loan Board is given power to grant or refuse alike to Joint

Stock Land Banks and Federal Land Banks *authority to make any specific issue of Farm Loan Bonds* (Sec. 17c). The collateral security for bonds issued must be deposited with the Farm Loan Registrar of the district, on applying for approval of the issue, and no issue of Farm Loan Bonds shall be authorized, whether made by Joint Stock Land Banks or Federal Land Banks, unless the Federal Farm Loan Board shall approve such issue in writing (Sec. 18). The security for the issue is retained by the Farm Loan Registrar, as Trustee. *The bonds to be issued are prepared for delivery to both Land Banks and the Joint Stock Land Banks, by the Secretary of the Treasury* (Sec. 20) *in a form prescribed by him.* The investment of the amortization payments made from time to time by borrowers is carefully regulated by Section 22 of the statute, the only differences between the two banks in this regard being that Federal Land Banks *may not* invest in Farm Loan Bonds issued by Joint Stock Land Banks, while Joint Stock Land Banks *may* invest in Farm Loan Bonds issued by Federal Land Banks, and that Federal Land Banks may loan their moneys on first mortgages on farm lands within the Land Bank District, whereas Joint Stock Land Banks are limited to loans upon lands within the State where located, or a State contiguous thereto.

But one other difference need be noted, namely, that the Federal Land Banks are authorized to accept deposits of current funds payable upon demand from their own stockholders (Sec. 14), whereas Joint Stock Land Banks are prohibited from receiving deposits not expressly authorized by the provisions of the Act (Sec. 16), and may not, therefore, be allowed to accept deposits even from their own stockholders. But both Joint Stock Land Banks and Federal Land Banks alike may act as depositaries of public money when so designated by the Secretary of the Treasury, in accordance with Section 6 of the Act.

It will, therefore be seen, that the Joint Stock Land Banks must make the expenses of their operation and all profits out of a margin of one per cent. between interest received from mortgages to them of farm lands and interest paid by them upon Farm Loan Bonds issued. Even with this slender margin of profit, the experience of four years' operation has shown that the business can be conducted with substantial profit. It may, therefore, readily be imagined what enormous profit has been enjoyed by the mortgage bankers, life insurance companies and other financial concerns which have been lending to farmers, not only at high rates of interest, but charging them with extortionate commissions for procuring the loans.

Unsuccessful Effort to Induce Congress to Destroy Joint Stock Land Banks.

It is this class of organizations from which the farmers have so long suffered, who, seeing an end put to their extravagant and unconscionable profits, have banded together to destroy, if possible, the competition which threatens their continuance. These are the people who are back of the present attack upon the law and upon these banks, and these are they who, at the last session of Congress, introduced and actually procured a favorable report from the Senate Committee on Banking and Currency, upon a bill to take from the Joint Stock Land Banks the protection of the exemption from taxation upon the mortgages made to and Farm Loan bonds issued by it. This bill (66th Congress, 2nd Session, Senate 3109) was acted upon by the Committee on December 8, 1919, and placed upon the calendar *without the formality of a hearing*. At the urgent request of the Joint Stock Land Banks, the bill was recommitted to the Committee and a hearing granted and held before the Committee on January 10, 12 and 13, 1920. (See report printed for use

of Committee.) After that hearing, at which the character of the opposition was exposed, and the actual workings of the system demonstrated, nothing further was heard of the bill. The principal support to the bill before the Committee came from the "Farm Mortgage Bankers Association of America," in whose name there was filed and is printed with the report an elaborate argument against the bill, to which, however, it may be observed, no individual seemed willing to put his name, the opposition being developed under this anonymity. We take the liberty of quoting in the Appendix (pp. 114-117) from the statement made by Mr. W. W. Powell, Secretary of the American Association of Joint Stock Land Banks, before the Committee, which gives succinctly the facts regarding the operation of these banks and the reasons which justify their creation as government instrumentalities.

POINT III.

The burden is upon Appellant to establish the unconstitutionality of the Farm Loan Act beyond a reasonable doubt.

Many years ago, the rule to govern courts in passing upon a challenge to the constitutionality of an act of Congress, was laid down in this language:

"It must be remembered that, for weighty reasons, it has been assumed as a principle in construing constitutions, by the Supreme Court of the United States, by this Court, and by every other court of reputation in the United States, that an act of the Legislature is not to be declared void unless the violation of the constitution is so manifest as to leave no room for reasonable doubt."

Commonwealth v. Smith, 4 Binney, 123.

In *Fletcher v. Peck*, 6 Cranch 87, Chief Justice MARSHALL said:

"It is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers and its acts to be considered void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

These citations were quoted in the *Legal Tender Cases*, 12 Wall., 457, at p. 531, by Mr. Justice STRONG, who added:

"It is incumbent, therefore, upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the Constitution. It is not sufficient for them that they succeed in raising a doubt."

Tested by this rule, we submit the Appellant in this case must fail.

POINT IV.

Appellant's attack on the constitutionality of the Farm Loan Act is based upon the erroneous hypothesis that the banks provided for in it are *private* institutions established for a *private* purpose. This fallacy runs throughout his argument.

The major premise of appellant's argument is that the purpose of the Act was to provide agencies which were not in the main to perform essential and necessary governmental functions, but which, in effect, were to perform private functions, loaning on mortgage and issuing bonds to private investors, wholly as the instruments of private business. Again and again, this insistence is

made. The fact that *one* of the great purposes of the act was to enable farmers to secure loans upon their lands at reasonable rates of interest, is seized upon as a support for the argument that the *whole* purpose of the Act was private and not public. The conclusive answer to this contention is furnished by the observation of Chief Justice MARSHALL in the *Osborn* case:

"The foundation of the argument in favor of the right of the State to tax the Bank is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern to be founded upon a contract between individuals having private trade and private profit for its great end and principal object. * * * But the premises are not true. The Bank is not considered as a private corporation whose principal object is individual trade and individual profit; but as a public corporation created for public and national purposes."

The whole crux of the case lies just there. If the great public purpose which Congress had in view in establishing this Farm Loan System and authorizing the creation of the different classes of banks as instrumentalities for carrying it out, is to be ignored, and the matter viewed purely as a means of authorizing the creation of private business instrumentalities for a private purpose, then, of course, the authority which Congress assumed to exercise cannot be sustained. On the other hand, if the entire current of decision from that which sustained the First Bank of the United States down to the present time, through all the widening development of fiscal institutions to serve the great public purposes of the Government, has the significance which we conceive it to have, these banks must be sustained either by a parity of reasoning with that which this Court adopted in upholding the creation of the National Banking System and

its extension to the Federal Reserve Act, or as a method adopted by Congress as an alternative to the direct appropriation of moneys for the public welfare.

The functions performed by these banks are no more private than those of the ordinary commercial banks of the National Banking System. They are part of the exercise of great instruments affecting public credit, designed to make more efficient the fiscal operations of the National Government, to develop the national wealth and to furnish that particular basis of credit upon which the successful operations of the State must depend.

The cases cited by appellant in support of his contention that the Land Banks are not "*banks*" within the meaning of that term, depend entirely upon the construction of particular statutes. Whether or not a given institution is a trust company, or a bank, within the meaning of a particular law applicable to one or the other, is wholly beside the mark, in the consideration of the question whether or not a given institution is a proper instrumentality for carrying out the fiscal purposes of the United States Government. Would the appellants contend that Congress could not authorize a modification of the National Banking Act, by providing in it for the establishment of financial institutions primarily exercising the powers usually conferred upon trust companies, and having, as do trust companies, all of the powers of banks, except that of issuing bills to circulate as money? We lay no stress upon the point whether or not the Federal Land Banks are *banks* within the ordinary sense of that term. We have pointed out the history of the growth and development of banks in the United States, showing that from the earliest times, the furnishing of credit based upon land was considered as a part of the banking business. But we are now contending only that the corporations

authorized by the Farm Loan Act are appropriate instrumentalities for the purpose of carrying out the fiscal business of the United States; that their operations necessarily have such direct relation to the fiscal operations of the National Government, that they are appropriate agencies for Congress to create for the purpose of carrying out its financial affairs. The argument of appellant is that the great business of loaning upon farm mortgages and issuing bonds secured by the pledge of these mortgages is not a governmental business, and that the receipt of government deposits and the rendering of services as disbursing agent of government moneys, constitute but a slight and not essential part of their business, and that the cases of *South Carolina v. United States*, 199 U. S., 437, and *First National Bank v. Union Trust Co.*, 244 U. S., 416, and other cases cited by appellant, drawing a distinction between the exercise of strictly governmental powers and the carrying on by Government of ordinary private business, therefore govern. We meet this by pointing out that the Farm Loan Act establishes a great governmental system for improving the public credit and facilitating the fiscal operations of the government.

The appellant's attempt to establish a difference between the contentions made in the brief of counsel representing the Federal Land Banks and those of counsel representing the Joint Stock Land Banks, will be disposed of by a glance at the briefs filed on behalf of them, respectively. There is no such difference between the contentions made by them as the appellant seeks to establish. Both of them maintain that Congress had authority to create these banks as instrumentalities of the government, empowered to issue Farm Loan Bonds for the purposes described (Hughes, Brief, Point III; Wickersham and McAdoo, Brief, Point V). Judge Hughes perhaps lays the greater stress upon the argu-

ment that Congress, having authority to provide for the investment of public moneys and the making of loans for the purpose of encouraging agricultural development throughout the country, might provide for such borrowing through the issuance of Farm Loan Bonds for the same purpose. These appellees also assert that the general purposes of the Farm Loan Act might have been obtained by Congress through the direct exercise of the powers of taxation and borrowing, and that, having this power, Congress may accomplish the same ends through corporate instrumentalities adapted to, or created for, the purposes. They further urge that the Farm Loan Banks of both classes are banking instrumentalities, lawfully created by Congress for the purpose of facilitating the fiscal operations of the government; that the operations of these banks have an important influence upon public credit; that the Land Banks of both classes are useful and essential instruments in the prosecution of the fiscal operations of the government, and therefore, within the constitutional powers of Congress to regulate and equip with the powers conferred upon them.

The appellant devoted a page or more of his original brief in this Court to an *ad captandum* effort to discredit the Farm Loan Act by the assertion that it was based

"upon the German plan of collective and co-operative borrowing of money on long-time farm mortgages. The words 'German plan' are used advisedly. Such plan was first adopted in Prussia. It found its principal development in Germany."

Again, he said:

"It is quite significant that the plan is German, as the real question here is whether there has been enacted a law inimical to the spirit of our institutions and contrary to the provisions of our Constitution."

"Merely because the system is German," he says,

"does not necessarily imply that it is illegal" (Brief, pp. 6, 8). A striking admission!

Apparently he regards this contention as having persuasive value in this Court, for he repeats and amplifies it in his revised brief.

Without commenting upon the taste displayed in submitting and reiterating suggestions of such nature to this Court, nor of the Appellant's appreciation of the weakness of his objections to the constitutionality of the Act, exhibited by the attempt to buttress arguments by such an appeal to national prejudice, the *fact* is, that in favorably reporting the bill to the House of Representatives on May 3, 1916, the Committee on Banking and Currency stated that

"Whatever its obligations to successful foreign systems," the bill "*provides for a distinctively American system of rural credits* and endeavors to embody, and it is confidently believed, does embody, the best thought which the thorough discussion of the past years has developed with reference to rural-credits legislation."

And again, that

"Your Committee has endeavored to draft a bill which when enacted into law shall provide an *American* system dedicated to the peculiar needs of the *American* farmer and so organized as to give service as efficiently as any system of rural credits in any other country in the world."

[64th Cong., 1st Session, Report No. 630 on Rural Credits. To accompany H. R. 15004.]

Such considerations, however, are wholly irrelevant to the only question before this Court, namely, whether or not the Congress in any respect exceeded its constitutional powers in the enactment of the legislation upon which depends the validity of the bonds questioned in the suit.

POINT V.

The Farm Loan Banks of both classes are banking instrumentalities lawfully created by Congress for a *public* purpose, namely, that of facilitating the fiscal operations of the Government. They are designed to relieve the National Banks from the demands of long-time agricultural credits. The operations of the banks have an influence upon public credit scarcely less important to the fiscal operations of the Government than that which led to the creation of the United States banks and the National banks.

The Farm Loan Banks constitute the final step in the development of a series of banking institutions organized pursuant to acts of Congress for the purpose of regulating and controlling the entire field of public credit in so far as it may affect the fiscal operations of the United States Government.

What Is a Bank?

The current idea of a bank is based upon the ordinary bank of deposit and discount.

Professor Morse says:

"A bank is not only a bank of discount and issue. Historically, receiving special deposits is the root of banking, but it is now of little importance compared with the great tree that looms against the Sky of Nineteenth Century Civilization."

Morse on Banks, Sec. 2.

Sir John R. Paget, writing for the *Encyclopædia Britannica* (11th ed., Tit. Bank), says:

"The word '*bank*' in an economic sense covers various meanings which all express one object, a contribution of money for a common purpose.
 * * * Originally connected with the idea of mound or bank of earth—hence with that of a *monte*, an Italian word describing a heap—the term has been gradually applied to several classes of institutions, established for the general purpose of dealing with money."

The essential conception of a bank implies the combination of moneys as a joint fund for the purpose of lending to others upon adequate security for its repayment.

See Morse on Banks, 5th ed., Secs. 2-4;
 Theory and History of Banking, Chas. F.
 Dunbar, pp. 2-9.

The receipt of money from stockholders or the purchasers of its bonds, the lending of money upon the security of farm mortgages and the facilities of credit provided by the issue and sale of bonds secured by an aggregation of mortgages—which is the primary business of both classes of the land banks, Federal and Joint Stock, constitute banking in the technical sense of the term. In the great development of commercial banks and banks of currency issue, the fact that land originally was regarded as the soundest basis for banking credit has been lost sight of.

Land as a Basis of Banking Credit.

The first report made by Hamilton, as Secretary of the Treasury, on the public credit, January 9, 1790, was pursuant to a resolution of the House of Representatives which declared

"that an adequate provision for the support of the public credit is a matter of high importance to the honor and prosperity of the United States" (2, Hamilton's Works, Lodge's Edition, p. 47).

In the second and fuller report which he made to the Senate January 20, 1795, he referred to the passage of the Act of February 25, 1791, incorporating the first Bank of the United States, and dwelt upon the great consequence to every country of credit, public and private. Public credit, he said, had been well defined to be

"a faculty to borrow at pleasure considerable sums on moderate terms; the art of distributing over a succession of years the ordinary efforts found indispensable in one; a means of accelerating the prompt employment of all the abilities of a nation, and even of disposing of a part of the overplus of others" (3 Hamilton's Works, pp. 37-9).

Function of a Bank in Maintaining Public Credit.

The part a bank plays in maintaining credit is described by Prof. Sumner with great lucidity in his *History of Banking*, Vol. I, pp. 28-30, as follows:

"A bank intervenes between lenders and borrowers and itself performs both operations. It gathers up capital from the lenders and distributes it to borrowers. Then it collects it again from the borrowers and returns it to the lenders. The pulsations of this movement are the life phenomena of the bank." • • •

"A very large class of credit operations, however, consists in what we might call suspended exchanges. Half the exchange operation is performed, but the other half is delayed under a promise or contract of later delivery. A bank steps between. It fulfils the contract at once and does the waiting. If no defalcation occurs, all the givings and takings will be equal, plus a commission for waiting."

It is the performance of this function of bridging over the interval between the time of the borrower's need and the period of his ability to repay, which is the great mission of a bank. The greater the certainty of meeting the legitimate requirement of borrowers and the guaranty of repayment and the more reasonable the conditions of this guaranty, the greater will be the stability of national fiscal conditions.

"Among the circumstances which recommend credit and indicate its importance in the whole system of internal exertion and amelioration," Hamilton pointed out in his Second Report, "it is impossible to pass unnoticed its unquestionable tendency to moderate the rate of interest—a circumstance of infinite value in all the operations of labor and industry."

"Public and private credit," he declared, "are closely allied, if not inseparable" (3 Hamilton, pp. 36-39).

In an earlier communication to Robert Morris, dated April 30, 1781, Hamilton had argued that to surmount existing obstacles to a satisfactory financing of the Government's requirements, and

"give individuals ability and inclination to lend in any proportion to the wants of the Government, a plan must be devised which by incorporating their means together and uniting them with those of the public will on the foundation of that incorporation and union erect a mass of credit that will supply the defect of money capital and answer all the purposes of cash." • • • • •

In his plan for the establishment of a bank contained in this communication, he proposed to demand landed security as a part of the bank's stock (3 Hamilton, pp. 99, 106).

To the House of Representatives, on December 13, 1790, he wrote:

"that, from a conviction (as suggested in his report herewith presented) that the national bank is an institution of primary importance to the prosperous administration of the finances and would be of the greatest utility in the operations connected with the support of the public credit, his attention has been drawn to devising a plan of such an institution upon a scale which will entitle it to the confidence, and be likely to render it equal to the exigencies of the public" (3 Hamilton, p. 125).

He argued that one of the results of the establishment of a bank would be to abridge rather than to promote usury (*Id.*, pp. 135, 137).

After outlining the form of the proposed organization and the objects sought to be accomplished by the bank, he said:

"Another wish dictated by the particular situation of the country is that the bank could be so constituted as to be made an immediate instrument of loans to the proprietors of lands; but this wish also yields to the difficulty of accomplishing it. Land is alone an unfit fund for a bank circulation" (*Id.*, pp. 161-162).

The First and Second United States Banks.

The Act of Congress creating the First Bank of the United States, approved February 25, 1791 (1 Stats., 191), recited:

"Whereas, it is conceived that the establishment of a bank for the United States upon a

foundation sufficiently extensive to answer the purposes intended thereby, and at the same time upon principles which afford adequate security for an upright and prudent administration thereof would be very conducive to the successful conducting of the national finances; would tend to give facility for the obtaining of loans for the use of the government in sudden emergencies; and would be productive of considerable advantages to trade and industry in general,"

therefore, it was enacted that the bank be established, with a capital stock of ten million dollars, one-fifth of which might be furnished by the Government, and subscriptions to the remainder of the capital by private parties might, to the extent of three-fourths thereof, be paid in bonds of the United States (Secs. 11, 2).

The bank was prohibited from loaning to the Government an amount exceeding \$100,000 (1 Stats. at Large, p. 196).

The history of this bank, the expiration of its charter in 1811 and the creation of the Second Bank of the United States in 1816, is well known. Holdsworth, writing of the First Bank, says its establishment was regarded as an essential and vital part of the general scheme for the support of public credit proposed by Hamilton—"an indispensable engine in the administration of the finances" (see "United States National Monetary Commission, First and Second Banks of the United States," by Holdsworth and Dewey, pp. 8-10).

The Act creating the Second Bank of the United States was passed April 10, 1816 (3 Stats., 266). The capital of the bank was fixed at thirty-five million dollars, seven millions of which was to be subscribed and paid for by the United States either in gold or silver coin, or in 5 per cent. stock of the United States. Subscriptions to the bank's capital, by others than the Government, were payable, one-third in gold or silver coin

and two-thirds in either coin or United States stock. The bank was forbidden to loan more than \$500,000 at any time to the Government.

The constitutionality of this act was challenged in the case of *McCulloch v. Maryland* (4 Wheat., 316). The argument against the act followed substantially the lines of the appellant's argument in the present case. What natural connection, asked counsel,

"is there between the collection of taxes and the incorporation of a company of bankers? Can it possibly be said that because Congress is vested with the power of raising and supporting armies that it may give a charter of monopoly to a trading corporation as a bounty for enlisting men? Or that under its more analogous power of regulating commerce it may establish an East or a West India Company with the exclusive privilege of trading with those parts of the world? Can it establish a corporation of farmers, or burthen the internal industry of the States with vexatious monopolies of their stable productions? There is an obvious distinction between those means which are incidental to the particular power, which follow as a corollary from it, and those which may be arbitrarily assumed as convenient to the execution of the power, or usurped under the pretext of necessity. For example: the power of coining money implies the power of establishing a mint. The power of laying and collecting taxes implies the power of regulating the mode of assessment and collection, and of appointing revenue officers; but it does not imply the power of establishing a great banking corporation, branching out into every district of the country, and inundating it with a flood of paper money" (4 Wheat., Mr. Jones, at p. 365).

Mr. Martin, for the State of Maryland, while not laying much stress on lack of power in Congress to erect the corporation, argued that the interest of the United

States in the bank was private property, and, though belonging to public persons, it was held by the Government as an undivided interest with private stockholders. It was employed in the same trade, subject to the same fluctuations of value, and liable to the same contingencies of profit and loss, and, therefore, it was subject to the taxing power of the States.

Stress was laid throughout the argument on behalf of the State upon the contention that the bank was a private enterprise, created for the private purpose of making money.

In reply, Mr. WEBSTER pointed out that:

"A bank is a proper and suitable instrument to assist the operations of the government, in the collection and disbursement of the revenue; in the occasional anticipations of taxes and imposts; and in the regulation of the actual currency, as being a part of the trade and exchange between the States. It is not for this Court," he said, "to decide whether *a bank*, or *such a bank* as this, be the *best* possible means to aid these purposes of government. Such topics must be left to that discussion which belongs to them in the two houses of Congress. Here, the only question is, whether a bank, in its known and ordinary operations, is capable of being so connected with the finances and revenues of the government, as to be fairly within the discretion of Congress, when selecting means and instruments to execute its powers and perform its duties. A bank is not less the proper subject for the choice of Congress, nor the less constitutional, because it requires to be executed by granting a charter of incorporation. It is not, of itself, unconstitutional in Congress to create a corporation. Corporations are but means. They are not ends and objects of government. * * * Congress has duties to perform and powers to execute. It has a right to the means by which these duties can be properly and most usefully performed, and these powers executed. Among

other means, it has established a bank; and before the act establishing it can be pronounced unconstitutional and void, it must be shown that a bank has no fair connection with the execution of any power or duty of the national government, and that its creation is consequently a manifest usurpation" (4 Wheat., pp. 325-326).

Attorney-General Wirt argued that the establishment of the bank

"was necessary and proper to carry into execution several of the enumerated powers, such as, the power of levying and collecting taxes throughout this widely extended empire; of paying the public debts, both in the United States and in foreign countries; of borrowing money, at home and abroad; of regulating commerce with foreign nations, and among the several States; of raising and supporting armies and a navy; and of carrying on war."

To make the law constitutional, he argued, nothing more was necessary than that it should be fairly adapted to carry into effect some specific power given to Congress (*Id.*, pp. 352-356).

Mr. PINKNEY argued that the bank might be established as a part of the public administration without incorporation, but that Congress might, if it chose, create a corporation for the purpose. And he maintained,

"the bank of the United States is as much an instrument of the government for fiscal purposes as the Courts are its instruments for judicial purposes" (*Id.*, pp. 389-396).

The arguments of Mr. Webster, Mr. Wirt and Mr. Pinkney were adopted *in toto* by the Court in Chief Justice MARSHALL's historic opinion. This opinion conceded that among the enumerated powers of Government the words "bank" and "incorporation" were not

found, but it pointed out that the Constitution did confer upon the United States

"the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. The sword and the purse, all the external relations, and no inconsiderable portion of the industry of the nation, are entrusted to its government."

Holding that a corporation might be employed by Congress with other means to carry into execution the powers of Government, no particular reason can be assigned, said the Chief Justice, for excluding the use of a bank, if required, for its fiscal purposes.

"To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned in the administration of our finances, have concurred in representing its importance and necessity; * * * The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument, as a means to effect the legitimate objects of the government."

But the Court made haste to add that

"were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place" (*Id.*, pp. 422-423).

In *Osborn v. Bank*, 9 Wheat., 738, where the constitutionality of the bank was again exhaustively reviewed, counsel for the appellant (the Ohio State Treasurer) con-

tended that banking in its nature is a private trade and business, in which individuals at all times may engage unless the municipal law forbid it; that if the individuals thus associated apply for and obtain from the legislative power of the country a special law creating them a corporation, they found their application upon some benefit to be derived to the public from conferring upon them the character they ask. This public benefit, he said,

“may consist of the facilities afforded to the State, in the management of its fiscal concerns; or it may consist in the convenience to the community in the transaction of mercantile and other money affairs. It may arise from the payment of annual revenue, or a stipulated sum, into the public treasury. If the benefit to the public be considered a sufficient compensation for the faculty conferred, the corporation is created. But from this fact, in the language of this Court, ‘nothing can be inferred which changes the character of the institution, or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created’ (citing *Dartmouth College v. Woodward*, 4 Wheat., 638).”

He then argued that this corporation might be employed as an agent of the Government in connection with its fiscal concerns, but that the bank incorporated was not more a State instrument than a natural person performing the same business would be; that a bank whose stock is owned by private persons is a private corporation, although it is erected by the Government, and its objects and operations partake of a public nature. Therefore, he contended, the bank, being such a corporation, was not clothed with any of the political power of its creator, and was subject to the tax imposed upon its business by the State of Ohio (9 Wheat., pp. 766, 780).

Counsel for the bank (Mr. Webster, Mr. Clay and Mr. Sargent) argued that the constitutional power of Congress to create the bank

"is derived altogether from the necessity of such an institution, for the fiscal purposes of the Union. It is established, not for the benefit of the stockholders, but for the benefit of the nation. It is part of the fiscal means of the nation. * * * The bank is created for the purpose of facilitating all the fiscal operations of the national government" (*Id.*, pp. 809-810).

The Court in the *Osborn* case reaffirmed the constitutionality of the bank, and its immunity from taxation by the States.

"The foundation of the argument in favor of the right of a State to tax the bank," said Chief Justice MARSHALL, "is laid in the supposed character of that institution. The argument supposes the corporation to have been originated for the management of an individual concern, to be founded upon contract between individuals, having private trade and private profit for its great end and principal object.

"If these premises were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs, would no more exempt its private business from the operation of that power, than it would exempt the private business of any individual employed in the same manner. But the premises are not true. The Bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. * * * The whole opinion of the Court, in the case of *McCulloch v. The State*

of Maryland, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage" (*Id.*, p. 860).

The operations of the bank, the Court said, are believed to be essential to the performance of its services to the Government. The business of the bank constitutes its capacity to perform its functions as a machine for the money transactions of the Government. Its corporate character is merely an incident which enables it to transact that business more beneficially.

"Were the Secretary of the Treasury to be authorized, by law, to appoint agencies throughout the Union, to perform the public functions of the bank, and to be endowed with its faculties, as a necessary auxiliary to those functions, the operations of those agents would be as exempt from the control of the States as the bank, and not more so. If, instead of the Secretary of the Treasury, a distinct office were to be created for the purpose, filled by a person who should receive, as a compensation for his time, labor and expense, the profits of the banking business, instead of other emoluments, to be drawn from the treasury, which banking business was essential to the operations of the government, would each State in the Union possess a right to control these operations? The question on which this right would depend must always be, are these faculties so essential to the fiscal operations of the government, as to author-

ize Congress to confer them? Let this be admitted, and the question, does the right to preserve them exist? must always be answered in the affirmative.

"Congress was of opinion that these faculties were necessary, to enable the Bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature" (*Id.*, pp. 863-864).

Real Accomplishment, and Necessity, of United States Banks Were the Maintenance of Public Credit.

Now, what was it that the United States banks could do to facilitate the fiscal operations of the National Government which convinced Congress and the Supreme Court of their importance? These banks were prohibited from lending money to the Government, except to the very limited amounts above referred to. The Government was a contributor to their common stock, to the extent of two millions in the First and seven millions in the Second Bank. True, the other subscribers were authorized to pay a portion of their contributions to the capital stock in Government bonds (three-fourths in the First and two-thirds in the Second Bank). Then there was the facility of making deposits of Government moneys as collected, at the offices of the bank and at its branches and the convenience of transmitting public moneys from one part of the country to another and of making payments by means of bills issued by the bank. *But the real accomplishment of the establishment of the bank was its effect upon public credit, and the results of the attack upon and the destruction of the bank twenty years later, was so to impair the public credit as to bring on the panic of 1837 and consequent great disorder in public and private finances for years afterwards.*

With the sudden extension of the financial wants of the Government resulting from the Civil War, came a new realization of the needs of a Federal banking system, not only for its effect upon public and private credits, but directly to enable the Government to meet the financial requirements of war, and to supply the country with a currency adequate to its needs.

The National Banking Act.

The latter was the need uppermost in the minds of the framers of the Act of Congress which was passed June 3, 1864, entitled "An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof" (13 Stats., 99). The act first established a separate bureau in the Treasury Department charged with the execution of this and all other laws that might be passed by Congress respecting the issue and regulation of the National currency secured by United States bonds.

By Section 5, it provided for the formation of associations for carrying on the business of banking, each such association to be a body corporate; the stock to be subscribed for by individuals, and no capital to be less than \$100,000, except that, with the approval of the Secretary of the Treasury, banks with a capital of not less than \$50,000 might be established in places with a population not exceeding 6,000. Such associations were authorized to

"exercise under this act all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; by obtaining, issuing, and circulating notes according to the provisions of this act; * * *."

The general scheme of the act looked to the issue by these banks of their notes, designed to circulate as money, to an amount not in excess of 90 per cent. of the par value of United States bonds deposited by the issuing bank in the National Treasury as security for the payment of the notes, which were to be legal tenders for the payment of all public and private debts (with certain exceptions).

The constitutionality of the National Banking Act was never *directly* questioned. It was *incidentally* involved in the cases which questioned the validity of the legal tender provisions and the constitutionality of State legislation affecting the operation of the banks. The legality of the provisions making National bank notes a legal tender for the payment of debts was assailed in

Legal Tender Cases, 12 Wall., 457.

The entire act was there upheld as a constitutional exercise of congressional power. The Court referred to the state of the country pending the Civil War, which gave rise to the condition in which the public treasury was nearly empty, and the credit of the Government had become nearly exhausted, while of foreign credit it had none; that at the time of such emergency the Legal Tender Acts were passed, and that they undoubtedly were appropriate means of meeting those conditions; that, even if it were conceded that some other means might have been chosen for the accomplishment of this legitimate and necessary end, the concession did not weaken the argument. Congress had the choice of means for a legitimate end, each appropriate and adapted to that end, though perhaps in different degrees, and it was not for the Court to criticize the selection made by it in carrying out its constitutional powers.

"The degree of the necessity for any congressional enactment, or the relative degree of its ap-

propriateness, if it have any appropriateness, is for consideration in Congress, not here" (pp. 541-542).

In the opinion of the Court, per STRONG, J., it was stated that

"the whole history of the government and of congressional legislation has exhibited the use of a very wide discretion, even in times of peace and in the absence of any trying emergency, in the selection of the necessary and proper means to carry into effect the great objects for which the government was framed, and this discretion has generally been unquestioned, or, if questioned, sanctioned by this court. This is true not only when an attempt has been made to execute a single power specifically given, but equally true when the means adopted have been appropriate to the execution, not of a single authority, but of all the powers created by the Constitution. * * * Under the power to regulate commerce, provision has been made by law for the improvement of harbors, the establishment of observatories, the erection of lighthouses, breakwaters, and buoys, the registry, enrolment, and construction of ships, and a code has been enacted for the government of seamen. Under the same power and other powers over the revenue and the currency of the country, for the convenience of the treasury and internal commerce, a corporation known as the United States Bank was early created. To its capital the government subscribed one-fifth of its stock. But the corporation was a private one, doing business for its own profit. Its incorporation was a constitutional exercise of congressional power for no other reason than that it was deemed to be a convenient instrument or means for accomplishing one or more of the ends for which the government was established, or, in the language of the first article, already quoted, 'necessary and proper' for carrying into execution some or all the powers vested in the government. Clearly this necessity, if any

existed, was not a direct and obvious one. Yet this court, in *McCulloch v. Maryland* (4 Wheaton, 416), unanimously ruled that in authorizing the bank, Congress had not transcended its powers" (p. 537).

Having in mind the rules of constitutional construction adopted in the *McCulloch* and other cases, the Court said:

"Before we can hold the legal tender acts unconstitutional, we must be convinced that they were not appropriate means, or means conducive to the execution of any or all of the powers of Congress, or of the government, not appropriate in any degree (for we are not judges of the degree of appropriateness), or we must hold that they were prohibited."

These banks were held not liable to the provisions of a State statute respecting the amount of interest which might be charged upon loans made by them; that they were exclusively governed by the provisions of the act of Congress under which only the entire interest which the debt carried was forfeited in the case of exaction of usury, in

Farmers' National Bank v. Dearing, 91 U. S., 29.

In that case, the Court said (per SWAYNE, J.):

"The constitutionality of the act of 1864 is not questioned. It rests on the same principle as the act creating the second bank of the United States. The reasoning of Secretary Hamilton and of this court in *McCulloch v. Maryland* (4 Wheat., 316) and in *Osborne v. The Bank of the United States* (9 *Id.*, 708), therefore, applies. The national banks organized under the act are instruments designed to be used to aid the government in the administra-

tion of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge."

They were held not liable to taxation upon their franchises or intangible property by a State, in

Owensboro N. Bank v. Owensboro, 173 U. S., 664,

upon the ground that they are instrumentalities of the Federal Government created for a public purpose.

To the same effect, in

Easton v. Iowa, 188 U. S., 220.

United States Postal Savings System.

The next step in the extension by Congress of direct Federal control over National credits, was the establishment of a banking system in the Post Office Department. By Act of June 25, 1910 (36 Stats., 814), a Postal Savings Depository Office was created in the Post Office Department under the control of a Board of Trustees consisting of the Postmaster-General, the Secretary of the Treasury and the Attorney-General, for the receipt, transmittal, custody, deposit, investment, and repayment of funds deposited with them—in other words, a bank for the reception of deposits of amounts, originally limited to not exceeding \$1,000 per person, but under recent amendment unlimited, upon which a low rate of interest was allowed. These funds, so deposited, were required in turn to be deposited in solvent banks organized under National or State laws, or invested in bonds or other securities of the United States (see U. S. Compiled Statutes, 1918, Secs. 7588-7590).

The constitutionality of this act was attacked in the Senate by Senator Rayner, of Maryland; Senator Bailey,

of Texas, and Senator Stone, of Arkansas. Its constitutionality was upheld by Senator Sutherland, of Utah, upon the ground that the act would bring more money into circulation, and, therefore, came within the power of Congress to coin money and to regulate commerce; that it was also within the post office power, and the proposed amendments authorizing the investment in Government bonds would bring it within the power to borrow money. Senator Root, supporting an amendment proposed by him authorizing investment in Government bonds, did so upon the ground that this would clearly bring the act within the borrowing power, and make it constitutional. In the House of Representatives, Mr. Moon maintained that the act could not be supported under the General Welfare Clause or the Post Office Clause; that it did not come within the power to borrow money, because the revenue so derived was not for the maintenance and support of the Government, if it were loaned to banks, and investment in Government bonds was made discretionary with the President. On the other hand, the general trend of the discussion in support of the bill put its constitutionality upon the power to borrow money and the General Welfare Clause.

This system has brought in an increasing amount of money. Deposits for the year ending June 30, 1913, amounted to \$33,818,870. For the year ending June 30, 1919, the aggregate amount was \$167,323,260. This sum, largely made up of deposits by foreign residents of the United States, in small amounts, was distributed and deposited in 5,211 banks, of which 3,239 were National and 1,972 State institutions; \$29,253,900 was invested in United States bonds (see Report of Post Office Department, Fiscal Year ending June 30, 1919).

Federal Reserve Law.

The next step was the enactment of the Federal Reserve Law in December, 1913 (38 Stats. at L., 251). The most important defects which had developed in the existing banking system were decentralized reserves, immobilized commercial paper, inelastic note issues, and the absence of a central controlling authority. The chief purpose of the act was stated in the report of the Senate Committee to be

“to give stability to the commerce and industry of the United States, prevent financial panics or financial stringencies, make available effective commercial credit for individuals engaged in manufacturing, in commerce, in finance, and in business, to the extent of their just deserts; put an end to the pyramiding of the bank reserves of the country and the use of such reserves for gambling on the stock exchange” (Senate Report No. 133, Part 1, 63rd Cong., 1st Session).

It is unnecessary to explain here the details of the system established by the Federal Reserve Act or the functions of the Federal Reserve Banks established in each of the districts into which the United States is divided pursuant to the act. The chief work of the Reserve Banks is the rediscounting of commercial paper. The most serious defect found in the existing banking system was in the cash reserves kept by the banks against their deposits, and the effect upon each bank of sudden emergencies or unexpected requirements of a larger amount of money than the deposit reserve. Under the new law, any bank which is a member of the Federal Reserve System may replenish its reserve when it wishes, by taking to the Reserve Bank of its district any commercial paper whose date of maturity at the time is not more than ninety days distant, and the Reserve Bank is

empowered to rediscount this paper at a rate subject to review and determination by the Federal Reserve Board (see "The Operation of the New Banking Act," by Conway and Patterson, Chapters 1 and 2).

Requirements of Loans Upon Land Security as Affecting Public Credit.

The authors of the work last cited call attention to one great factor affecting public credit, namely: the requirements of land owners for loans secured by mortgage upon their lands. They say:

"A factor which has been largely responsible for the rapid growth in the number and resources of State banks has been the wider latitude which they have enjoyed in making loans and investments. One of the most important advantages which they possess is the power quite generally given to make loans within certain limitations upon real estate mortgages. The most valuable class of assets of any nation is its land, for from it, directly or indirectly, comes all the wealth of the country, and the sustenance of its people. With banks situated in rural districts or in the smaller towns where the holdings of corporate securities are not apparently so great, the most common asset of value is real estate" (Conway and Patterson, p. 332).

The history of banking in the United States shows that as early as 1686, it was proposed to the authorities of the Colony of Massachusetts to set up a bank to issue notes and make loans on the security of land and imperishable merchandise. This scheme was approved and authorized.

"All that is known of the history of this association, the first chartered bank in Massachusetts, is found in a brief reference to it made by an

anonymous author of a pamphlet printed in 1714. 'Our fathers about 28 years ago entered into a partnership to circulate their notes founded on land security, stamped on paper, as our Province bills, which gave no offense to the government then, etc.'" (Sumner, History of Banking, Vol. 1, p. 4).

"In the history of the early Massachusetts banks we see the first development of the antagonism between commercial banking and agricultural banking. * * * The jealousy of the rural population in respect to banks led them to insist upon inserting in bank charters a provision that a certain fraction of the capital should be loaned on mortgage of land. * * * A generation later * * * people came to say that banks were a curse to all agricultural interests and persons. We shall see that in the history of banks in this country, it has been a question of paramount importance, what is the utility of banks to farmers and how is it to be realized? From the standpoint of commercial banking with ninety-day paper, a loan to a farmer for a year with a stipulated renewal was bad banking; but on the other hand such a loan could never answer the purpose of the farmer. Repayment within a year is for him vexatious and impracticable. He needs loans for years or for an unlimited period. Never until modern institutions of credits suited to the necessities of the case grew up, did this antagonism of facts, interests and institutions pass away" (Sumner, p. 39).

The extent of the requirements of land credit is shown in a table incorporated in the report of the United States Comptroller of the Currency for the year 1915, by which it appears that the total amount of loans secured by mortgage on real estate for that year was \$643,388,896, and the total amount of loans secured by other collateral was only a little more than twice that amount, namely, \$1,410,021,422.

The effect upon National credit of the proper financ-

ing of this vast requirement became increasingly apparent, and a provision was inserted in the Federal Reserve Act of 1913, authorizing any National banking association not situate in a central reserve city to make loans secured by improved and unencumbered farm land for a time no longer than five years, and to an amount not exceeding 50 per cent. of the actual value of the property offered as security, such loans being limited in the aggregate to 25 per cent. of the capital and surplus of the lending bank, or one-third of its time deposits (Sec. 24).

At the same time, it was realized that this provision would not afford a complete solution of the problem of financing the farmer, nor would it meet the requirement of bringing under more comprehensive Federal direction and control the entire subject of rural long-time credits. Accordingly, Congress appointed a commission to investigate and study in European countries co-operative land mortgage banks, co-operative rural credit unions, and similar organizations and institutions devoting their attention to the promotion of agriculture and the betterment of rural conditions, which commission made its report to Congress on January 29, 1914 (Doc. No. 380, Senate, 63rd Cong., 2d Session).

The commission, in its report, referred to the establishment and history of the land banks in France, known as *Crédits Fonciers*, for the purpose of advancing money on mortgages of real property, repayable in instalments over a long period, as well as to similar institutions in Germany, Italy and other countries.

Agricultural credit, the Committee said, naturally divides itself into two great classes—namely, long term, or land mortgage credit, which may be briefly defined as “credit to meet the capital requirements of the farmer,” and short term, or personal credit, which may be defined

as "credit to meet the current or annually recurring needs of the farmer." In the European system of agricultural banks, the distinction between these two classes of credits is sharply drawn. To meet the requirements of the two classes, separate institutions are provided, differing fundamentally in their plan of organization and operation. The Committee pointed out that the farmers' capital requirements, by which is meant the need of the farmer for large sums of money to use in paying the purchase price of the farm, making improvements, etc., must be in the shape, more or less, of a permanent investment, or of loans extending over a long period of time, which can be gradually reduced and paid off out of the increased earnings derived from the improvement made or the equipment added by the farmer with the proceeds of such loans; whereas, his temporary or annually recurring requirements, meaning the money needed by him to finance his operations during the time the crops are being raised, can be accommodated by credits extending from thirty or ninety days to one year. The Committee referred to the so-called mortgage banks which have grown up in Europe, saying:

"One general principle which underlies the mortgage banks of Europe is the issue of bonds which are based on the collective value or security of many individual mortgages on real estate. It is the merging of the credit demands and the property resources of many individuals somewhat similarly situated into one financial transaction * * *. These bonds are justly popular and have made possible the construction of many mighty works of civilization." * * *

"Land-mortgage bonds, when issued under rigid Government supervision, form an ideal kind of investment or trust security, because they bear a fair rate of interest, command a ready market, and exhibit great stability of value. All speculation is avoided by restricting mortgage banks to

the granting of loans to private owners of land; and when such loans are granted, to the issuing of collateral trust bonds only to the amount of the loans. The capital of the bank is required to be invested chiefly in other safe interest-bearing securities, and this remains as an additional security to the holders of the bonds. Under these conditions such bonds are of the highest type of absolutely safe investment. Their value in no wise depends upon speculative elements and varies but little, presenting a favorable contrast with railway and commercial stocks and bonds * * * (pp. 23-24).

In closing this section of its report the commission referred to the fact that

"the commercial world has had constructed for it a magnificent system of commercial banks; the frugal laborers and savers of the cities have their system of savings banks and building and loan associations, and the great corporations have their trust companies. All of these and other similar financial institutions assist in the financing of the agricultural industry to some extent, but none of them is adequate or can be made adequate to supply this special need without a sacrifice to their present field of endeavor. The commission recognizes that too great ease in borrowing should not be encouraged, since this might result in an unreasonable increase in farm debt. On the other hand, it should not be forgotten that under the present system tenancy continues to increase and farmers have outstanding obligations easily exceeding two billions of dollars secured by mortgages on their farms, much of which was negotiated under very unfavorable circumstances and with very high rates of interest. It is believed that under the plans which have been formulated herein, and which are intended to be supplementary to the existing system, tenancy may be decreased, the needs of farmers be taken care of, and at the same time the outstanding obligations may be refunded on

much more favorable terms and gradually reduced by the regular payment of small annual instalments impossible under the general system now found in this country."

The Committee attached to its report a proposed law which was introduced in both houses of Congress, considered in Committee, reported out with amendments, debated during several days in both houses, and finally passed as the Act now under consideration.

The Committee on Banking and Currency of the House of Representatives, in its report, said:

"The immediate purpose of this bill is to afford those who are engaged in farming or who desire to engage in that occupation a vastly greater volume of land credit on more favorable terms and at materially lower and more nearly uniform interest rates than at present available."

"The means whereby this purpose is to be accomplished is provided through the establishment of national-chartered and Government-supervised organizations to grant long-time, amortizable loans at low interest rates upon farm-mortgage security; to assemble in each organization individual farm mortgages into one collective security; and to issue upon this collective security credit instruments to be known as farm-loan bonds of such safety and soundness as to command the investment funds of the country in abundance."

The principal objection to the bill was made upon the ground that these banks would be just what the appellant at bar argues they are not, namely, *financial institutions for Government purposes*.

During the debates in the Senate, Mr. Gronna objected to the Joint Stock Banks provided for in the bill, upon the ground that they would be "simply another financial banking institution which would supersede the institutions which we now have"

(53 Cong. Rec., p. 7382). Senator Lodge presented a memorandum entitled "Government Savings Bank Features of the Hollis Bill," which, after analyzing the provisions of the bill, concluded with the following:

"In view of these clauses, the Federal Land Banks would be government banks for savings and deposits while their entire resources may be used in financing government projects instead of in farm mortgaging."

"The total tax exemptions, together with the free or cheap money supplied in cash by the Secretary of the Treasury, or through the issue of five per cent. bonds, or any other kind of credit instrument, would place building and loan associations, mutual savings banks, life insurance companies and every other kind of existing lending, savings or thrift association, and all other monied corporations at a disadvantage with the new institutions to be formed, unless the states also should enact laws exempting all money and credits from taxation."

This memorandum noted, among other things, that

"Joint Stock Land Banks may use all resources in dealing in bonds of the United States Government" (citing Sec. 18) (53 Cong. Rec., p. 7128).

There was some discussion in the Senate over the constitutionality of the proposed measure, although the principal debate concerned the clauses which exempted the operations of the proposed banks from taxation. Senator Williams maintained,

"there is no difference between the National Banking Act and this act, except the differences that grow out of the very character and nature, not of Federal jurisdiction, not of the extent of power granted by the Constitution to the Federal Government, but of the business carried on one the one side by the commercial people and on the other side by the agricultural people."

Senator Cummings, while opposing the exemption clauses, expressed the belief that Congress had as much authority to pass the bill as it had authority to create National banks.

"I should like to see them," he said, "stand as a part of the fiscal system of the United States in exactly the same way as national banks stand" (p. 7317).

Senator Walsh referred to the decisions which upheld the constitutionality of the National banks as necessary and convenient instrumentalities for the purpose of carrying on the fiscal operations of the Government, and declared himself unable to distinguish in principle between these new National banks proposed to be brought into existence under the Farm Loan Bill and the existing National banks. It is true, he said,

"that the national banks now in existence have the power to issue their notes payable on demand, and that those notes circulate practically as money, but wherein in principle do these obligations differ" (referring to the proposed farm loan bonds) "from the obligations those banks issue that are designated as bonds" (53 Cong. Rec., pp. 7373-7376).

In the House of Representatives, Mr. Finley, discussing the exemption clauses, said:

"The United States is the last of the great nations to take up the all important question of rural credits. The most important matter confronting any of the people is the maintenance of an adequate food supply, and this can be done only by a prosperous and contented rural population. The most startling development of the last twenty-five years has been the phenomenal growth of our cities. This has been somewhat at the expense of the farms, though not to such an extent as to give cause for great concern as yet. The countries of Europe have recognized the necessity for improv-

ing conditions for the farmers, who in turn are responsible for the food production of the country. The United States, through the Department of Agriculture, has been doing something of late years in the way of dispensing information, conducting experiments, and so forth, for the farmer along agricultural lines and better roads.

"But there remains the question of credit for the farmer, and about this as yet nothing has been done. There are in this country about 12,000,000 farmers; the value of their farm property, including animals, amounts to \$40,000,000,000. The value per annum of all farm products is about \$10,000,000,000, and it has been estimated that the average gross income of a farmer in this country is \$791. A large part of this is consumed on the farm; the remainder is sold, and out of the proceeds the farmer makes up all expenses incurred, including his debts or interest on same, if any. It has also been estimated that the farmers owe about \$6,000,000,000, over \$2,000,000,000 of which are secured by mortgages on their homes and farms. They pay interest at rates ranging from 6% to 25% per annum in the form of interest, commissions, lawyers' fees, and renewal charges, making an estimated annual interest charge of \$510,000,000, which is equivalent to a rate of about 8½%. These figures are taken from reports of legislative committees and public officials, and I have no doubt of their accuracy. The rates vary in the different sections of the country—low rates in the northern section east of the Mississippi River, high in the section west of this river and in the Southern States.

"The high interest shows at once the heavy burden of debt carried by the farmers. This burden could be greatly lightened by securing money at more reasonable rates of interest. Only in the United States, of all the great countries of the world, must the farmers go into the money markets in competition with business men, whose profits are made in a shorter time, and, not being so largely dependent on the seasons, are made with

greater certainty. Other countries provide a means for the farmer to borrow money for strictly agricultural purposes at rates of interest that make probable to the farmer some profit on the year's work. There is no reason why farmers should not borrow money without difficulty on first mortgages at 4 and 5 per cent., and, at most, 6 per cent. And this is what rural credits legislation proposes to accomplish. It would save to the farmers at least \$250,000,000 a year in interest charges alone. The plan is to issue bonds to the amount of the mortgages, sell the bonds to obtain money, loan this twenty times in all. • • •"

While the political aspect of the matter, that is, the benefit to the farmers in providing a system whereby they might secure loans for the development of their industry upon terms reasonably adapted to their condition, was most prominent in the debates in Congress, yet the larger consideration of the effect upon the public credit of the proposed new banking system was, as the quotations from the debates above given show, constantly referred to. It could hardly have been otherwise. Assuming the substantial accuracy of Mr. Finley's figures, that the farmers of the country owe upwards of \$2,000,000,000 secured by mortgage on their homes, the establishment of a system which would provide for the renewal of these loans extending over a long period of years, repayable by periodical amortization payments, upon reasonable rates of interest, must vitally affect the general money market, and directly reflect upon the fiscal operations of the Government. The practical operations of the act have demonstrated the tremendous importance to the Government of the establishment of this new system. There are annexed as exhibits to this brief, consolidated statements showing (a) the condition of the twelve Land Banks and (b) that of the twenty-nine Joint Stock Land Banks, at the close of business August 31,

1920. These statements show that the total capital of the Federal Land Banks is \$24,428,972.50, only \$6,832,680 of which is now held by the Government. These banks have loaned \$346,507,855.16 upon farm mortgages, against which they have issued and now have outstanding \$327,495,000 in bonds secured by these mortgages. The statement does not show what amount of these bonds was held on that date by the United States Government, but our information is that the amount is \$175,000,035.

The report of the condition of the Joint Stock Land Banks shows that their aggregate capital and surplus amounts to \$8,595,601.61. These banks have loaned an aggregate of \$79,209,884.14 on farm mortgages, against which they have issued, and now have outstanding, \$60,089,300 in bonds secured by these mortgages.

Under the system heretofore existing, the interest rates upon farm mortgages varied from $5\frac{1}{2}$ to $10\frac{1}{2}$ per cent. per annum, and sometimes higher, besides which the borrower was charged a commission of from 3 to 6 per cent. cash on a five-year 6 per cent. loan and as high as 2 per cent. commission for an extension of a loan for one year. The Farm Loan Act provides ready loans at a rate not exceeding 6 per cent. per annum, and no cash commission. The repayment of the principal is spread over a long period of years, and yet these loans are made liquid assets through the medium of the bonds issued against the aggregate of a large number of the mortgages, backed, in the case of the Federal Land Banks, by the combined resources of all the banks of the system, and in the case of the Joint Stock Land Banks by the double liability of the stockholders of each bank.

The greatest asset of the nation consists in the value of its cultivable lands. Yet it is estimated that over 60 per cent. of these lands are at present uncultivated. The great need of the country, the great need of the Government, in providing revenues to meet the high

national debt resulting from the war, is that the agricultural resources of the country be developed to the utmost. But "the expansion of the nation's agriculture is limited by the supply of labor and capital available for farming purposes" (see Report, Secretary of Agriculture, 1919). By means of credits provided by the Farm Loan Act, the amount of national capital available for production is greatly increased, and a very great economy of the national resources effected. The system of repaying land credits by small periodical payments extending over a period of years, made possible by the issue of bonds under this act, will tend materially to prevent financial panics and financial stringency and thus contribute to the successful conduct of the Government's financial operations.

The amortization payments required to be made by the borrowers from Farm Loan and Joint Stock Land Banks by Section 22 of the act, are constituted a trust fund, which only can be invested as therein permitted; one of the methods authorized being in United States Government bonds. Both classes of banks, by Section 6, when designated by the Secretary of the Treasury, are made depositaries of public money, except receipts from customs and financial agents of the Government, under such regulations as may be prescribed by the Secretary, who must require of them satisfactory security, by the deposit of Government bonds, or otherwise for the faithful performance of their duties as such agents.

The statements appended hereto show that on August 31, 1920, the twelve Federal Land Banks held among their assets \$7,583,227.77 in United States Government bonds and securities, and the twenty-nine Joint Stock Land Banks held \$3,132,089.62 in like bonds and securities. Thus it is apparent that with the growth of the amortization funds, a widening market will be created for United States bonds.

The beneficial results above described of the Farm Loan System certainly cannot successfully be claimed to be without an obvious and logical effect upon the fiscal operations of the United States Government, and it safely may be said of these banks, as it was of the old United States Bank, that

"the time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument as a means to effect the legitimate objects of the government" (*McCulloch v. Maryland*, 4 Wheat., 316, 423).

POINT VI.

The general purposes of the Farm Loan Act might have been attained by Congress through the direct exercise of the powers of taxation and borrowing.

The appellant hardly will dispute in this Court certain propositions which he expressly conceded on the argument in the District Court, viz., that Congress having power to borrow money and to levy and collect taxes, can appropriate public moneys under the general welfare clause, even for a purpose not expressly authorized by the Constitution; that the stimulation of agriculture is a public purpose for which Congress may appropriate moneys, and that it may apply the moneys so appropriated through the mechanism of a corporation created or adapted by it for the purpose. These propositions are established by authority beyond the possibility of serious dispute.

The history of the embodiment in the Federal Reserve Act of the limited authorization to national banks to loan on farm lands (39 Stats., 752, 754) has been given.

But a recognition of the fact that these provisions were inadequate to provide for credits extending over a

period of years secured by real estate security, led to the enactment of the Farm Loan Act.

The House Committee on Banking and Currency, in reporting the bill on May 3, 1916 (Report 630), said:

"It has become manifest that a new form of credit organization must be established which shall be especially and peculiarly adapted to the farmer's requirements. It must be designed to give a service that commercial banks, savings banks, insurance companies, individuals, and other existing agencies cannot give at the present time. For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates; it must be enabled to secure ample funds for the use of the farmer from the investing public. Under such a system the farmer borrower will not be compelled to assume a high interest rate mortgage obligation due within a comparatively short period of time under which he is subjected to frequent renewals with the incidental trouble, expense, and danger of foreclosure, and will not be dependent upon credit obtained under the most exacting and burdensome conditions."

The creation of such a national system of rural credits is a great public purpose which Congress might have provided for, either by direct appropriation, or through the existing national and reserve bank system, or by the creation of new agencies especially adapted to the designated end.

It was characterized by the Secretary of the Treasury in his report to Congress for the year 1918, as

"the great governmental agency for financing a basic industry of the United States—that of agriculture."

(a) The power of Congress to raise and appropriate money for the general purpose of aiding in the develop-

ment of agriculture in general hardly can be questioned. It rests upon the powers granted by Article I, Section 8, of the Constitution, which reads:

"The Congress shall have power

"(1) To lay and collect taxes, duties, imposts, excises, to pay the debts and provide for the common defense and general welfare of the United States;

"(2) To borrow money on the credit of the United States;

"(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The weight of authority is to the effect that the proper construction of paragraph (1) above quoted is, that the power to lay and collect taxes is not unlimited, but is qualified by the second part of the paragraph, namely, *for the purpose of providing for the common defense and promoting the general welfare* (*Miller's Lectures on The Constitution*, p. 230; *Story on The Constitution*, Secs. 907, 908, 909, 922).

(b) It is equally well settled, that the power of taxation thus granted is not confined to the purpose of revenue, nor limited in its objects to those purposes which are enumerated in the paragraphs following the first in Section 8 of Article I (1 *Story*, Secs. 925, 975-978).

In Section 978, Judge STORY refers to HAMILTON's Report on Manufactures, 1791, and in Section 979, to President MONROE's Message concerning the bill appropriating for repairs to the Cumberland road.

In the report, Hamilton pointed out that the power of Congress to raise money was plenary,

"and the objects to which it may be appropriated are no less comprehensive than the payment of public debts and the providing for the common defense and general welfare."

Considering this phrase, "general welfare," he said:

"And there seems no room for a doubt that whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, *so far as regards an application of money*. The only qualification of the generality of the phrase in question which seems to be admissible is this, that the object to which an appropriation of money is to be made must be *general* not *local*—its operation extending in fact or by possibility throughout the union, and not being confined to a particular spot."

Story, commenting on these opinions, refers to the practice of the government as having been "entirely in conformity to the principles here laid down." Appropriations, he says,

"have never been limited by Congress to cases falling within the specific powers enumerated in the Constitution, whether those powers be considered in their broad, or their narrow sense" (§991).

He refers to a number of striking instances of appropriations for purposes, none of which was within any of the express powers granted in the succeeding paragraphs of Section 8 after paragraph (1).

See also *Willoughby on The Constitution*, Sec. 269.

(c) The only limitation upon the power of Congress to appropriate moneys is that the purpose shall be public

and general as distinguished from private. Even this limitation is not always observed.

It seems to have been recognized from the foundation of the government that the power of Congress to appropriate is co-extensive with the power to tax (*Story on Constitution*, Secs. 922, 924), and in fact, in the exercise of the power of appropriation, the practice has been even broader than the scope of the power to tax. As Prof. Willoughby says:

"The limitation that an appropriation should be for a public purpose has been without practical effect as the courts have in no case attempted to hold invalid an appropriation by Congress on the ground that it has been for a purpose not public in character; and as regards the restriction that appropriations shall be in aid of enterprises which the federal government is empowered to undertake, the doctrine has become an established one that Congress may appropriate money in aid of matters which the federal government is not constitutionally able to administer and regulate" (§269).

"It has been generally held, however, that a tax may be levied avowedly and exclusively not for revenue but as a means for regulating a matter which is within the legislature's power to control. Thus in *Veazie Bank v. Fenno*, 8 Wall., 533, the power of Congress to levy a tax as a means of regulating the currency is upheld."

Willoughby on The Constitution, Sec. 263, citing *Head Money Cases*, 112 U. S., 580.

Congress also may by a law framed as a tax measure in effect subject to regulation or even to destruction, an enterprise over which it has no direct power of control, 1 *Willoughby*, Sec. 263, citing *McCray v. U. S.*, 195 U. S., 27, upholding a prohibitive tax on oleomargarine artificially colored to resemble butter.

See also *Flint v. Stone Tracy Co.*, 220 U. S., 107, 169.

The great scope of the legislative power to tax is described by Judge COOLEY (*Const. Lim.*, pp. 184-185) in the following language:

"Taxes should only be levied for those purposes which properly constitute a public burden. But what is for the public good, and what are public purposes, and what does properly constitute a public burden, are questions which the legislature must decide upon its own judgment, and in respect to which it is vested with a large discretion which cannot be controlled by the courts, except perhaps where its action is clearly evasive, and where under pretence of a lawful authority, it has assumed to exercise one that is unlawful. Where the power which is exercised is legislative in character, the courts can enforce only those limitations which the constitution imposes; not those implied restrictions which, resting in theory only, the people have been satisfied to leave to the judgment, patriotism and sense of justice of their representatives."

Willoughby (Sec. 268) says, that while the validity of the proposition that taxation can be levied only for public purposes is beyond dispute, judicial records furnish comparatively few instances of tax levies being held void for this reason:

"This is due in the first place to the fact that not often do the laws expressly state the purpose for which a tax is levied, and in the second place, where this purposes is stated, the courts will, in deference to the legislative judgment, construe the purpose to be a public one if it is possible to do so."

He quotes *Brodhead v. City of Milwaukee*, 19 Wis., 624, where it was said:

"To justify the court in arresting the proceedings and declaring a tax void, the absence of all

possible public interest in the purpose for which the funds are raised must be clear and palpable to every mind at the first blush."

Willoughby distinguishes *Loan Association v. Topeka*, 20 Wall., 655, in that the case did not involve a law levying a tax, but one authorizing towns to issue bonds payable to private manufacturing companies to encourage and aid them in establishing their plants within their respective jurisdictions. It was there held by the Court that inasmuch as taxes would have to be levied for the payment of these bonds, the law in effect attempted to authorize the towns to levy taxes in aid and encouragement of a private purpose, and was, therefore, void. MILLER, J., said, referring to decisions which had upheld taxation in aid of the building of railroads, that in all those cases the decision turned upon the finding that the building of a railroad was for a public purpose; that railroads had not lost this public character because constructed by individual enterprise aggregated into a corporation. It was further said (p. 664):

"The courts can only be justified in interposing when a violation of this principle is clear and the reason for interference cogent. And in deciding whether, in the given case, the object for which the taxes are assessed falls upon the one side or the other of this line, they must be governed mainly by the course and usage of the government, the objects for which taxes have been customarily and by long course of legislation levied, what objects and purposes have been considered necessary to the support and for the proper use of the government, whether State or municipal. Whatever lawfully pertains to these and is sanctioned by time and the acquiescence of the people may well be held to belong to the public use, and proper for the maintenance of good government, though this may not be the only criterion of rightful taxation."

United States v. Gettysburg Electric Railway, 160 U. S., 668, involved the constitutionality of an act of Congress providing for the acquisition, through the exercise of the power of eminent domain, of property at Gettysburg, to be used for the purpose of preserving the lines of the great battle fought there, and for properly marking with tablets the positions occupied by the various commands of the armies on that field, for opening and improving avenues along the positions occupied by troops, etc. Appropriations had been made for the purpose of carrying out the provisions of the act. The plans made pursuant thereto involved taking lands which the Gettysburg Electric Railway Company was occupying as a part of its right of way. The District Court held the act to be unconstitutional. This was reversed in the Supreme Court, PECKHAM, J., writing the opinion, the initial statement of which is that

"The really important question to be determined in these proceedings is, whether the use to which the petitioner desires to put the land described in the petitions is of that kind of public use for which the government of the United States is authorized to condemn land. It has authority to do so whenever it is necessary or appropriate to use the land in the execution of any of the powers granted to it by the Constitution." It has "the great power of taxation, to be exercised for the common defense and general welfare."

It was then held that the proposed use to which this land was to be put was a public use within these powers.

"Any act of Congress which plainly and directly tends to enhance the respect and love of the citizens for the institutions of his country and to quicken and strengthen his motives to defend them, and which is germane to and intimately connected with the appropriate exercise of some one or all of the powers granted by Congress must be valid. This proposed use comes within such description."

In the *Legal Tender Case*, 110 U. S., 421, the power of Congress to make the treasury notes of the United States a legal tender in payment of private debts, in time of peace as well as in time of war, was upheld. The Court (per GRAY, J.) said (p. 444):

"The words 'to borrow money,' as used in the Constitution, to designate a power vested in the national government, for the safety and welfare of the whole people, *are not to receive that limited and restricted interpretation and meaning which they would have in a penal statute, or in an authority conferred, by law or by contract, upon trustees or agents for private purposes.*"*

"The power 'to borrow money on the credit of the United States' is the power to raise money for the public use on a pledge of the public credit, and may be exercised to meet either present or anticipated expenses and liabilities of the government. It includes the power to issue, in return for the money borrowed, the obligations of the United States in any appropriate form, of stock, bonds, bills or notes; and in whatever form they are issued, being instruments of the national government, they are exempt from taxation by the governments of the several States. *Weston v. Charleston City Council*, 2 Pet., 449; *Banks v. Mayor*, 7 Wall., 16; *Bank v. Supervisors*, 7 Wall., 26. Congress has authority to issue these obligations in a form adapted to circulation from hand to hand in the ordinary transactions of commerce and business. In order to promote and facilitate such circulation, to adapt them to use as currency, and to make them more current in the market, it may provide for their redemption in coin or bonds, and may make them receivable in payment of debts to the government. So much is settled beyond doubt * * *."

*Italics ours.

It is true that in *United States v. Realty Co.*, 163 U. S., 427, the Supreme Court declined to pass upon the constitutionality of provisions in the Tariff Act of 1890 which granted bounties to producers of sugar within the United States, because those provisions had been repealed and the specific question before the Court was as to the right of Congress to recognize the moral claim of producers who had qualified under the bounty act to receive payments from the government, but whose claims had not been paid before the repeal of the law, and in whose favor Congress had passed an act providing for payment of those claims. It was held that whether the bounty act were constitutional or not, the producers had a moral claim against the government, which Congress had a right to recognize, even though the claim were not of a strictly legal character. The Court said:

"Of course, the difference between the powers of the state legislatures and that of the Congress of the United States is not lost sight of, but it is believed that in relation to the power to recognize and to pay obligations resting only upon moral considerations or upon the general principles of right and justice, the Federal Congress stands upon a level with the state legislature" (p. 443).

(d) The encouragement, stimulus and improvement of agriculture is a public purpose, and appropriations for such objects are for the general welfare. Such appropriations have been made by Congress from an early date in our history. As Chief Justice MARSHALL in *M'Culloch v. Maryland*, 4 Wheat., 316, 401, said:

"It will not be denied, that a bold and daring usurpation might be resisted, after an acquiescence still longer and more complete than this. But it is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but

the respective powers of those who are equally the representatives of the people, are to be adjusted, if not put at rest, by the practice of the government, ought to receive a considerable impression from that practice. An exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."

As early as 1839, Congress passed an appropriation bill for the collection of statistics on agriculture by the Commissioner of Patents (5 Stats., 354).

In 1857, this power was enlarged to the extent of directing the Commissioner to procure and distribute cuttings and seeds, and to investigate the consumption of cotton throughout the world (11 Stats., 221, 226). From time to time, similar appropriations were made, and on May 15, 1862, the Department of Agriculture was created (12 Stats., 387), and the statistics and powers of the Commissioner of Patents were transferred to this new department. The act creating this department (now U. S. R. S., Sec. 520, *et seq.*) reads as follows:

"There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and diffuse among the people of the United States useful information on subjects connected with agriculture, in the most general and comprehensive sense of that word, and to procure, propagate and distribute among the people new and valuable seeds and plants."

In 1889, an appropriation was made to the Entomological Commission under the Department of the Interior for the investigation of the Rocky Mountain locust or grasshopper and the cotton worm, but it was provided that such work in the future should be under the Department of Agriculture (21 Stats., p. 259).

Numerous appropriations have been made for the use and purposes of the Department of Agriculture since its creation. Thus, in 1863, an appropriation was granted (12 Stats., 682, 691),

“for the collection and compiling of agricultural statistics; for promoting agricultural and rural economy; and the procurement, propagation, and distribution of cuttings and seeds of new and useful varieties; and for the introduction and protection of insectivorous birds; and for the purpose of establishing a laboratory, with the necessary apparatus for practical and scientific experiments in agricultural chemistry * * *.”

In 1884, a bureau of the Department of Agriculture was organized (23 Stats., 31), known as the Bureau of Animal Industry, to investigate and collect such information about domestic animals, their diseases, etc.,

“as shall be valuable to the agricultural and commercial interests of the country.”

In 1890, Congress created a Weather Bureau in the Department of Agriculture, the duties of which formerly had been performed by the Signal Corps of the Army (26 Stats., 653).

U. S. Comp. Stats., Section 8870, July 2nd, 1862, Chap. 130, Section 4, 12 Stats., 503, amended March 3rd, 1883, Chap. 102, 22 Stats. 484, provides for the establishment of State Agricultural Colleges. These may be formed from the proceeds of the sale of lands apportioned to the States, and from the sale of land scrip, these proceeds to be kept as a trust fund.

Section 8871 provides further appropriations for these colleges, in each of which there is located an agricultural experiment station.

Section 8879 enacts:

"It shall be the object and duty of said experiment stations to conduct original researches or verify experiments on the physiology of plants and animals; the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at their different stages of growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimation; the analysis of soils and water; the chemical composition of manures, natural or artificial, with experiments designed to test their comparative effects on crops of different kinds; the adaptation and value of grasses and forage plants; the composition and digestibility of the different kinds of food for domestic animals; the scientific and economic questions involved in the production of butter and cheese; and such other researches or experiments bearing directly on the agricultural industry of the United States as may in each case be deemed advisable, having due regard to the varying conditions and needs of the respective States or Territories."

(March 2nd, 1887, Chap. 314, Sec. 2, 24 Stats., 440.)

Section 776, Comp. Stats. (March 2nd, 1889, Chap. 411, Sec. 1, 25 Stats., 939, 960), established an

"Irrigation Survey: For the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation and the segregation of irrigable lands in such arid region, and for the selection of sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and for ascertaining the cost thereof, and the prevention of floods and overflows, and to make the necessary maps, including the pay of employees, in field and office, the cost of all instruments, apparatus, and materials, and all other necessary expenses con-

nected therewith, the work to be performed by the geological survey under the direction of the Secretary of the Interior * * *."

In 1917, Congress passed an act in regard to pink bollworm (40 Stats., 343, 374), a menace to cotton, which is as follows:

"On account of the menace to cotton culture in the United States arising from the existence of the pink bollworm in Mexico, the Secretary of Agriculture, in order to prevent the establishment and spread of such worm in Texas and other parts of the United States, is authorized to make surveys to determine its actual distribution in Mexico; to establish, in co-operation with the States concerned, a zone or zones free from cotton culture on or near the border of any State or States adjacent to Mexico; and to co-operate with the Mexican government or local Mexican authorities in the extermination of local infestations near the border of the United States."

Provisions also are contained in the statutes for the preparation and issue periodically of farmers' bulletins (34 Stats., 669, 690), for the investigation and demonstration within the United States to determine the best method of obtaining potash on a commercial scale (29 Stats., 446, 465), and for many other objects of real or supposed interest to the agricultural interests of the country.

Indeed, so greatly have the activities of the Department of Agriculture been increased and diversified in recent years that its disbursements of appropriations made by Congress for purposes within its jurisdiction reached in 1917 the sum of \$29,567,148.35, and in 1918 the sum of \$45,759,461.46. The last mentioned sum included the following amounts:

For stimulating agriculture and facilitating distribution of products	\$6,343,000.19
Plant industry expenses.....	2,099,749.98
Purchase of seeds.....	243,270.98

None of these objects is within the expressed powers of Congress. They rest for their authority on the power to levy taxes to provide for the common defence and promote the general welfare of the Union, and to appropriate moneys so raised to such purposes.

The total expenditures of the Department of Agriculture for 1920 were \$51,647,400, and the estimated expenditures for 1921, \$77,206,650. See Report Secy.-Treas., 1920, pp. 203-205.

It can hardly be denied that Congress, if it chose, instead of accomplishing the purposes of the Farm Loan Act by the mechanism of the different classes of corporations authorized by it, might have appropriated moneys to be raised by taxation, or provided for the annual issue and sale of government bonds, the proceeds realized in either case to be loaned out on farm mortgages, under the same restrictions as to interest, terms of repayment, etc., as those contained in the Farm Loan Act, under the direct administration of the Treasury or of any other department of the United States Government.

The vital importance to the nation of encouraging the development of its agricultural resources has been abundantly demonstrated during the recent war. It is equally important to the immediate future. No satisfactory development will be possible unless the farmers can secure needed moneys at moderate rates of interest and on easy terms of repayment. The ordinary banks of issue and discount cannot bear this burden. The rates and terms exacted by the great moneyed and insurance corporations, even if the funds at their disposal were adequate—which they are not—are more onerous than those which the government through the mechanism of the Farm Loan Act can provide. There is no public purpose more vital to the entire nation than that which moved Congress to the enactment of this law. The appellant wholly misses its object and the great public importance of its enactment, in his imperfect and prejudiced interpretation of

its purpose and meaning. The *main* purpose of the agencies created by the act is the performance of the great governmental function of establishing great instruments for the improvement of public credit, to aid in the stimulation and development of the agriculture of the country, and to make more efficient the fiscal operations of the National Government; the private and proprietary features of the corporations authorized, with their closely restricted possible profits, are but incidental and secondary.

POINT VII.

Having the power to raise money for the purposes under consideration by taxation or borrowing, and to apply it directly, through the Treasury Department or any other department of the Government selected for the purpose, Congress may accomplish the same ends through corporate instrumentalities adapted to or created for the purpose.

Congress is the exclusive judge of the method of accomplishing the ends above described. It may create corporations empowered to raise the necessary funds by stock subscription, bond issue, or deposits, to be loaned on farm mortgages, regulating the method of conducting the business so as to ensure its successful prosecution, and aiding, so far as it may deem expedient, by the loan of government funds or credit. This it first attempted through the National Banking Associations and the Federal Reserve Banks. The inadequacy of that machinery being recognized, the system embodied in the Farm Loan Act was adopted.

(a) Since the great cases of

McCulloch v. Maryland, 4 Wheat., 316, and
Osborn v. Bank, 9 Wheat., 738,

the power of Congress to create corporations to carry out any of its powers no longer can be questioned.

The power was held to be included in the right of any sovereign government which is empowered to do a particular act and has imposed upon it the duty of performing that act, to be allowed to select the means according to the dictates of reason.

See, also,

Luxton v. North River Bridge Co., 153
U. S., 525-529.

In that case it was held (p. 530) that

"although Congress may, if it sees fit and as it has often done, recognize and approve bridges erected by authority of two States across navigable waters between them, it may, at its discretion, use its sovereign powers, directly or through a corporation created for that object, to construct bridges for the accommodation of interstate commerce by land, as it undoubtedly may to improve the navigation of rivers for the convenience of interstate commerce by water."

(b) The circumstance that capital stock of the Federal Land Banks *may*, and that of the Joint Stock Land Banks *must* be subscribed and held by private individuals, and that profits realized in the business of each may be distributed among such shareholders, does not make the enterprise a private, not a public one, nor restrict the powers of Congress over the corporations, their property or business.

The constitutionality of the act creating the United States Bank, in which the government was merely a minority stockholder, was upheld upon the ground that it was created for public purposes, and was adopted by Congress as an expedient method of exercising the powers vested in it to lay and collect taxes, to borrow money,

etc.; that the powers given to the Congress implied ordinary means of execution, and that a corporation was a convenient, a useful, and an essential instrument in the prosecution of the fiscal operations of the government. See *Osborn v. Bank*, 9 Wheat., 738, 860.

Answering the question, why it is that Congress can incorporate or create a bank, MARSHALL, C. J., in *Osborn v. Bank*, said (p. 861):

"This question was answered in the case of *M'Culloch v. The State of Maryland*. It is an instrument which is 'necessary and proper' for carrying on the fiscal operations of the government."

The national banks authorized to be established under the Act of Congress of June 3rd, 1864 (13 Stat., 99), were to be formed by private individuals who should subscribe and hold the stock and distribute among themselves by way of dividends all the profits of the enterprise. Yet their constitutionality was upheld, resting, as the Supreme Court said in *Farmers' National Bank v. Dearing*, 91 U. S., 29, on the same principle as the act creating the Second Bank of the United States:

"The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them, Congress is the sole judge" (pp. 33-34).

Davis v. Elmira Savings Bank, 161 U. S., 275;

Owensboro National Bank v. Owensboro, 173 U. S., 664;

Easton v. Iowa, 188 U. S., 220;

to the same effect.

(c) Congress is the sole judge of the extent and

measure of the powers to be conferred upon the banks or other corporations which it creates to carry out purposes which it might constitutionally accomplish by other methods.

MARSHALL, C. J., in *M'Culloch v. Maryland*,
4 Wheat, 316, 421.

In *Easton v. Iowa (supra)*, the conclusion was reached that, as Congress had power to create a system of national banks, it was the judge as to the extent of the powers which should be conferred upon them, and had the sole power to regulate and control the exercise of their operations.

Appellant's contention that Congress has no power to provide for the organization, by private individuals for private profit, of private corporations, with power to issue the obligations of such private corporations, etc., exempt from taxation, need not be disputed if there were no other consideration involved. But where such corporations, so empowered, as in the case of national banks, or as in the present instance, are authorized by Congress for some public governmental purpose as well, their legality is unquestionable. In its application to the Federal Farm Loan System, appellant's contention is completely met by Chief Justice MARSHALL's opinion in *Osborn v. Bank*, 9 Wheat., 738, 859.

The Court in that case demonstrated and held that the power of Congress extended over the faculties, trade and occupation of the bank, as well as its corporate existence; that the trade of the bank was essential to its character as a machine for the fiscal operations of the government, and, therefore, must be as exempt from State control as the actual conveyance of the public money.

"National banks," said the Court, in *Davis v. Elmira Savings Bank*, 161 U. S., 275, 283, "are instrumentalities of the Federal Government,

created for a public purpose, and as such necessarily subject to the paramount authority of the United States."

And in *Easton v. Iowa*, 188 U. S., 220, 229, it was said:

"Having due regard to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain."

The conclusion announced was "upon principle and authority," that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations.

(d) The banks of the Federal Farm Loan System, like those of the National Banking System, are public corporations, "created for public and national purposes." Their creation is not authorized for their own sakes or for private purposes. Their incorporation, government and operations are under strict federal control. They are called into existence to accomplish the great national purposes described in the title to the act, and to relieve the national banks of a character of fiscal operation which, though capable by law of discharge by such banks, can better be performed by banks especially organized for its conduct.

(e) Appellant argues, that considered as an appropriation measure, the means adopted in the enactment of the Farm Loan Act are not necessary nor proper to the end in view. He says:

"The end to be accomplished by this legislation was not the development of agriculture or the stabilization of farm credits. No power to develop agriculture or stabilize farm credits can be found

anywhere in the Constitution. It cannot rest under the General Welfare Clause any more than could the power to reclaim arid lands."

The appropriation of moneys for the development of agriculture as one of the great national purposes involved in the public welfare is too well established by legislative practice since the foundation of the government to require argument. *Kansas v. Colorado*, 206 U. S., 46, decided nothing which militates against the exercise by Congress of the powers expressed in the Farm Loan Act.

That case involved no question of the constitutional exercise by Congress of its legislative power. The two States, parties to the suit, were concerned in a controversy respecting the right of Colorado to divert waters of the Arkansas River for the irrigation of lands within its territory, which Kansas claimed prevented the natural and customary flow of the river into and through its territory. The Attorney-General of the United States filed on behalf of the United States an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands owned by the United States. It was not averred that the diversion of the waters tended to diminish the navigability of the river, but it was asserted that there was a superior authority and supervisory control in the United States over the States, to regulate the flow and appropriation of the river. The argument was that, in view of the conflict of interest between two or more states, the Nation, as incident to its inherent sovereignty, had the implied power to intervene and control. The Court pointed out that there was involved no question of the power of the National Government over the navigability of a stream; that the Government distinctly asserted that the Arkansas River was not and never had been practically navigable, and

nowhere claimed that any appropriation of the waters by Kansas or Colorado affected its navigability.

"It rests its petition of intervention," said Mr. Justice BREWER, "upon its alleged duty of legislating for the reclamation of arid lands; alleges that in or near the Arkansas River, as it runs through Kansas and Colorado, are large tracts of those lands; that the National Government is itself the owner of many thousands of acres; that it has the right to make such legislative provision as in its judgment is needful for the reclamation of all these arid lands and for that purpose to appropriate the accessible waters. • • • In other words, the determination of the rights of the two States *inter sese* in regard to the flow of waters in the Arkansas River is subordinate to a superior right on the part of the National Government to control the whole system of the reclamation of arid lands. That involves the question whether the reclamation of arid lands is one of the powers granted to the General Government" (206 U. S., at pp. 86-87).

This question was answered in the negative. It was held, that, within its own borders, each State had full jurisdiction over the lands and other waters, including the beds of streams, and the complaint of one State as to the effect of action by the other was held to present a justiciable controversy within the jurisdiction of the Supreme Court. The question there considered was totally different from the one at bar. Here, we are dealing with the exercise by *Congress* of its *legislative* power; there, the *Executive* branch of the Government sought to intervene as "steward of the public welfare," asserting an implied power in Congress which was nowhere expressed, and which this Court held was not properly to be implied from any express power. The fact that the United States

owned a large amount of public land which was arid was one of the reasons alleged for the intervention, but the actual position taken was, that there was an implied power in the United States to govern the reclamation of arid lands because of the importance of that reclamation. The case did not involve in any aspect the question of the right of the Federal Government directly or indirectly to appropriate money in aid of agriculture. The same question would be presented here, if the Government were claiming the power to legislate in regulation of the method of farming within the States, instead of merely creating machinery to raise and lend moneys to farmers on reasonable terms, to encourage them to develop and increase the agricultural productivity of the country, upon which the public welfare so greatly depends, thereby releasing banks of discount and issue of the burden of this financing, and strengthening and improving the public credit.

(f) Having provided for the creation of these land banks with the purpose above described primarily in view, Congress has also adapted them to other legitimate federal purposes.

In *Easton v. Iowa*, 188 U. S., 220, the Court (SHETRAN, J.), said (p. 238):

"Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations."

Section 6 of the Farm Loan Act provides that:

"All Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except re-

ceipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them * * *."

By Section 32, the Secretary of the Treasury is empowered, upon the request of the Farm Loan Board, to make deposits of public moneys for the temporary use of any Federal Land Bank, upon terms and conditions specified in the section.

Having in mind, also, the vast demands upon the national treasury imposed by conditions resulting from the war, and the need of creating constantly widening markets for United States bonds, the title to the Farm Loan Act expressly states one of its purposes to be "*to furnish a market for United States bonds.*" Provisions are found in Sections 5, 6, 13 (Eighth), 18 and 22 for investment in these bonds, as well as for the purchase by the Treasury Department of bonds issued by the banks of the Farm Loan System.

If any portion of the business which these land banks are authorized to conduct be within the power of Congress to authorize, the courts may not segregate those objects from other corporate authority conferred and, while upholding part, condemn the rest. All alike must be regarded as authorized.

Judge STORY (2 Comm., Sec. 1269), in discussing the power of Congress to create a bank as an appropriate means of carrying into effect some of the enumerated powers of government, says:

"In regard to the faculties of the bank, if congress could constitutionally create it, they might confer on it such faculties and powers as were fit to make it an appropriate means for fiscal opera-

tions. They had a right to adapt it in the best manner to its end. No one can pretend that its having the faculty of holding a capital; of lending and dealing in money; of issuing bank notes; of receiving deposits; and of appointing suitable officers to manage its affairs; are not highly useful and expedient and appropriate to the purposes of a bank. . . . No man can say that a single faculty in any national charter is useless, or irrelevant or strictly improper, that is conducive to its end as a national instrument. Deprive a bank of its trade and business, and its vital principles are destroyed. . . . All the powers given to the bank are to give efficacy to its functions of trade and business."

First National Bank v. Union Trust Co., 244 U. S., 416, involved the validity of provisions in the Federal Reserve Bank Act (38 Stats., 251, 262), which authorized national banks to act as trustee, executor, administrator or registrar of stocks and bonds.

Quoting from *Osborn v. Bank*, 9 Wheat., 738, WHITE, C. J., said:

"The ruling in effect was that although a particular character of business might not be when isolatedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: 'Congress was of opinion that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature' (p. 864)" (p. 420).

The Court said that the test of the existence of the power to grant the particular functions in question must be met by considering the Bank

"as created by Congress as an entity with all the functions and attributes conferred upon it" (p. 424).

It was held that a determination could not be made as to a given power upon a separation of the particular functions from the other attributes and functions of the bank. Referring to *McCulloch v. Maryland*, 4 Wheat., 316, and *Osborn v. The Bank*, 9 Wheat., 738, it was further said:

"What those cases established was that although a business was of a private nature and subject to state regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in co-operation with or as part of its public authority. Manifestly this excluded the power of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise" (p. 425).

The Farm Loan Act has been accurately described as follows:

"The act creates an organization for pecuniary aid alone; that is, it is concerned only with the application of money. There is no attempt to conduct agricultural activities within the State, to undertake the management of farm property, to

manage or control any internal concerns of the State, or to interfere with the exercise of the authority of the States over lands within their borders."

Every principle upon which the constitutionality of the National Banking Act has been upheld applies with equal force to the Farm Loan Act.

POINT VIII.

The provisions exempting from taxation, State or Federal, the mortgages executed to Federal Land Banks or Joint Stock Land Banks, and Farm Loan bonds issued by either class of banks under the provisions of the Farm Loan Act, and the income derived therefrom, are within the powers of Congress to enact.

Having the power to create these corporations and to provide through their instrumentality for the purposes mentioned, Congress may protect them by exempting their operations from taxation to the extent it deems necessary. This has been done by Section 26 of the act, which reads as follows:

EXEMPTION FROM TAXATION.

"Sec. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds

issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed."

There can be no question of the power of Congress to grant to the Farm Loan Bonds exemption from Federal taxation.

Leaving out of consideration for the moment any question of the validity of the exemption of the Farm Loan Bonds from *State* taxation, let us examine the question of Federal taxation.

At the outset it is important to note that Congress has not attempted to violate its exemption of the Farm Loan Bonds from all Federal taxes. The only existing United States tax law under which it might be supposed they might be taxed is the Federal Income Tax Law (40 Stat., 1057) and that statute (in its definition of gross income, Sec. 213, 4, b) expressly exempts them from taxation. So we start from the position that under existing Federal tax laws Farm Loan Bonds are not taxable, and move to

the question whether Congress has the power to promise to continue that exemption.

Congress has the undoubted power, subject only to the constitutional limitation as to uniformity, to declare the objects or subjects which it will tax. This power is plenary and practically not subject to judicial review. Thus in *Flint v. Stone Tracy Company*, 220 U. S., 107, at page 169, the Court said:

"The taxing power conferred by the Constitution knows no limit except that expressly stated in that instrument."

It should be remembered that in the *Stone Tracy* case this Court (p. 173) expressly upheld the constitutionality of the exemption of income of agricultural associations from the Income Tax Act of 1909 (36 Stat., 11). See also *McCray v. U. S.*, 195 U. S., 27.

Congress clearly has the power to decide not to tax any Farm Loan Bond and it has done just that. So likewise, Congress has the undoubted power not only thus to classify the objects of taxation and leave some entirely free from tax for reasons which seem to it good, but also the right to lay down policies of tax exemptions; to grant tax exemptions permanently or for a limited period, and to promise tax exemptions. Thus Congress promised an exemption from state taxation on Indian lands for a period of years and that declaration was held effective by this Court in *U. S. v. Rickert*, 188 U. S., 432. This Court early declared the power of the States to grant exemptions from taxation, and went further and held that contracts of exemption thus made by the States were protected by the Constitution of the United States and were not revocable. Such is the holding of *New Jersey v. Wilson*, 7 Cranch 164, where MARSHALL, C. J., declared unconstitutional an act repealing an exemption from taxation attaching to certain New Jersey lands.

The power of Congress to choose the objects of its own taxation and to pledge the faith of the United States to the continuation of a policy of exemption and to make contracts of exemption, is likewise un doubted—not the less so although it may not be protected by any constitutional prohibition against any subsequent Congressional action. The question of exemption of the Farm Loan Bonds from Federal taxation is a pure question of tax policy with which and with the practical wisdom of which the Courts have nothing to do—that point of the case is not open to controversy.

Indeed, the APPELLANT has made no contention to the contrary of this proposition, either in his briefs, or in his oral arguments.

The Exemption of the Farm Loan Mortgages and Bonds from State Taxation also Is Within the Power of Congress.

Granting the power of Congress to incorporate these institutions, the power to protect the property and the business and the instrumentalities of the banks from State taxation rests upon elementary principles. The power to tax is the power to destroy (*McCulloch v. Maryland*, 4 Wheat., 316, 431; *Loan Association v. Topeka*, 20 Wall., 655, 663; *Weston v. Charleston*, 2 Pet., 449).

That a State may not by taxation or otherwise hamper the operation of an agency of the Federal Government has been settled since the decision in *McCulloch v. Maryland*, 4 Wheat., 316. See *Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516, 521. The power of the States to tax shares in National Banks depends upon the permission to do so granted by Congress. A tax upon farm mortgages taken, or Farm Loan bonds issued by Federal Land Banks or Joint Stock Land Banks, would be a tax on the operations of these banks

and not only would hamper, but might wholly destroy their ability to carry out the purposes of Congress. These securities are adopted by Congress as instrumentalities in carrying out the great public purpose of the establishment and successful operation of the Farm Loan System. Even in the absence of express exemption, it is doubtful if the States might tax their operations (*Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516). But Congress has removed all doubt by the clear enactment of exemption.

In *Farmers and Mechanics Savings Bank v. Minnesota*, 232 U. S., 516, it was held that municipal corporations established in territories of the United States are instrumentalities of the Federal Government and therefore the States may not tax bonds issued by them.

In *Fidelity and Deposit Co. v. Pennsylvania*, 240 U. S., 319, plaintiff, a Maryland surety company, claimed that in becoming a surety upon bonds required by the United States, it acted as a federal instrumentality and was not subject to State taxation on the premiums received. *Congress had not attempted to exempt it from such taxation.* While it was recognized that the tax was an exaction for the privilege of doing business, and it was conceded that "a State may not directly and materially hinder the exercise of Constitutional powers of the United States by demanding in opposition to the will of Congress that a Federal instrumentality pay a tax for the privilege of performing its functions," it was held that "mere contracts between private corporations and the United States do not *necessarily* render the former essential governmental agencies and confer freedom from state control" (p. 322). The Court also pointed out that Congress had not attempted to exempt such corporation from taxation.

On the other hand, in *Indian Territory Illuminating Oil Co. v. Oklahoma*, 240 U. S., 522, oil leases of lands in

Oklahoma made by an Indian tribe under the authority of acts of Congress were held to be under the federal protection, and the lessee a federal instrumentality, and it was decided that the State could not tax the interest of the lessee in the leases directly, and could not tax the capital stock of the corporation owning them. A tax upon the lease was held to be a tax upon the power to make the lease. *Choctaw & Gulf R. R. v. Harrison*, 235 U. S., 292, was relied upon. There it was held that the agreement between the United States and certain Indian tribes ratified by Act of Congress (30 Stats., 495, 510), imposed upon the United States a definite duty in respect to opening and operating the coal mines upon their lands. The appellant railroad company, in conformity with the provisions of the Act, had taken leases of certain of the mines, obligating itself to mine annually specified amounts of coal and to pay agreed royalties, and was therefore held to be the instrumentality through which the Government was carrying its obligations into effect. Such instrumentality, it was held, could not be subjected to an occupational or privilege tax by the State.

In *Farmers' National Bank v. Dearing*, 91 U. S., 29, it was held that national banks were not subject to State statutes regulating the amount of interest which might be charged by a bank doing business within the State upon loans made by it; that such banks were instruments designated to be used to aid the Government in the administration of an important branch of the public service; that they were a means appropriate to that end, and that of the degree of the necessity which existed for creating them, Congress was the sole judge. The Court, per SWAYNE, J., said:

“Being such means, brought into existence for this purpose and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far

as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will, the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control, the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government, * * * The power to create carries with it the power to preserve. The latter is a corollary from the former" (p. 34).

To the same effect, *Owensboro National Bank v. Owensboro*, 173 U. S., 664, where WHITE, J., said (p. 668) :

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."

See also *Easton v. Iowa*, 188 U. S., 220; *Bank of California v. Richardson*, 248 U. S., 476.

Mercantile Bank v. New York, 121 U. S., 138, involved a consideration of the application of a tax law of New York to national banks. Speaking of the National Banking Act, the Court said :

"The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not sub-

jects of taxation; and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, *being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States.* It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investments in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy" (p. 154).

The power of Congress to exempt the operations of the Land Banks as it has done is therefore amply sustained by authority. The statute carefully follows the precedents set in the case of National Banks.

POINT IX.

Congress might constitutionally have created both classes of banks to serve as depositaries of public moneys and financial agents of the government. That it chose also to empower them to loan moneys on farm mortgages, even if that were not within its power to grant, would not impair the legality of the incorporation, nor its jurisdiction to protect them against National or State taxation.

By Section 6 of the Act, the Secretary of the Treasury is authorized to designate both the Federal Land Banks and the Joint Stock Land Banks as depositaries of public moneys, and to employ any of them as financial agents of the government. It is of no consequence that this power has been so little exercised up to the present time. The entry of the United States into the war the year following the enactment of the Farm Loan Act, is a sufficient explanation for failure to put all of the provisions of the Act into effect. It is shown by the bill that the Treasury Department, under the authority of the amending Act of 1918, did make deposits of substantial amounts in eight different Federal Land Banks, and it also appears in the bill (Rec., p. 10) that during the summer of 1918, three of the Federal Land Banks were designated as financial agents of the government for the making of seed grain loans to farmers in drought-stricken sections. It is not necessary that a financial agent of the government should be a bank of discount and deposit. What is

required is, first, that such agent be an organization which may receive deposits where, for example, the money collected by the Internal Revenue authorities of the government may be deposited, such banks giving security for the safekeeping of the deposits in like manner as national banks do; secondly, that it have an organization appropriate to the receipt and disbursement of government moneys. The Treasury Department is constantly paying out money in every State of the United States. It is disbursing public funds in carrying out the ordinary transactions of the government. For this purpose, it avails of many different agencies, and these Land Banks may, in given instances, be peculiarly adaptable to service of that character; as was the case when, in the summer of 1918, the government set aside \$5,000,000 to loan in small amounts to farmers to enable them to buy seed grain. The bill of complaint shows that the three Land Banks designated made upwards of 15,000 loans of that character, aggregating in all more than \$4,500,000 (Rec., p. 10). Such financial agencies also may be called upon from time to time by the Secretary of the Treasury to sell the temporary certificates of indebtedness of the government; that is, to go out and find purchasers for these temporary certificates, which are issued by the Treasury for the purpose of facilitating the operations of the United States Treasury between the times when taxes are being received. The United States Treasury often needs money at times when taxes are not due. Instead of borrowing it from banks, it issues temporary certificates of indebtedness bearing interest at four or five per cent., and calls upon banks of all kinds to assist in marketing such certificates. Some banks take them as investments, employing a portion of their deposits or of their capital for that purpose. Others sell to investors, who buy them. The farmers are investors. In many cases they might be reached through

the Land Banks better than through the national banks, and it is thus readily apparent that this agency would be useful in circumstances of that character. These banks also may be employed by the Secretary of the Treasury as financial agents for the purpose of selling War Savings Stamps and Thrift Stamps. It has been the experience of the Treasury Department that too many agencies for that purpose cannot be found in the country. They also may be employed in selling the bonds of the government, as was the case with the various Liberty Loans. It is of the utmost importance that every possible purchaser may be reached, and organization of this description, dealing with farmers, may reach sources of investment which otherwise would not be attained. Congress obviously had in view these possibilities when it enacted in Section 6 the provision authorizing the Secretary of the Treasury to designate these two classes of corporations, to serve as depositaries of public money and as financial agents of the government. As time goes on and more banks are organized, they will become increasingly useful in assisting the Federal Government in the performance of its fiscal operations. If there were no other purpose than this for the creation of these corporations, could the Court say that Congress had exceeded its jurisdiction in authorizing their formation?

Appellant has sought in his brief to question the motives of Congress in enacting the Farm Loan Act (Brief, pp. 7, 8, 13). On the one hand, he calls the title to the act misleading, and in another place, he appeals to the title as showing that it is not an appropriation act—which nobody has ever claimed that it was. What the appellees contend is, that Congress had full power to provide by appropriation for the accomplishment of the purpose which it has created the machinery of this act to accomplish in a different way. That the courts will not attempt to restrain the exercise of a lawful power by Con-

gress on the assumption that a wrongful motive or purpose has caused the power to be exercised, has been long settled. (*McCray v. United States*, 195 U. S., 27, 53-59; *Red "C" Oil Co. v. North Carolina*, 222 U. S., 380.)

In *Florida Central & Peninsular R. R. Co. v. Reynolds*, 183 U. S., 471, the Court said (p. 480):

"We must assume the legislature acts for the best interests of the State. A wrong intent cannot be imputed."

In *Ellis v. United States*, 206 U. S., 246, HOLMES, J., delivering the opinion of the Court, said:

"It is true that it [Congress] has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed cannot be limited by a speculation as to motives" (p. 256).

POINT X.

This appeal challenges the validity of an Act of Congress which was framed after extensive inquiry, unusual study and full debate, for the purpose of adequately providing for a great public need. As Chief Justice MARSHALL said of the Act incorporating the Second United States Bank, this Act "did not steal upon an unsuspecting legislature and pass unobserved" (*McCulloch v. Maryland*, 4 Wheat., 316, 402).

Millions of dollars have been invested by the public in reliance upon its provisions and upon the faith of the exemption from taxation held out by Congress as an inducement to investors. Seldom has a controversy been presented to this Court which threatens such far-reach-

ing financial loss as would follow if the contention of the Appellant were upheld. In such circumstances, it is submitted that the entire absence of Constitutional power in Congress must be clearly demonstrated before the Court would declare worthless the millions of securities sold on the faith and credit of an Act of Congress so deliberately and so carefully enacted. We most earnestly submit that not only has this want of power not been established, but that the contrary is clearly demonstrated, and therefore that the decree appealed from which dismissed the bill should be affirmed.

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venor-Appellee.*

APPENDIX.

A.

The Federal Farm Loan Act.

Summary of Provisions.

The Federal Farm Loan Act was approved by the President July 17, 1916. It is entitled:

"An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

Federal Farm Loan Bureau.

The administration of the Act is placed (Sec. 3) under the direction and control of a Federal Farm Loan Bureau, established at the seat of government, in the Treasury Department, under the general supervision of a Federal Farm Loan Board, consisting of the Secretary of the Treasury, who is ex-officio Chairman of the Board, and of four members appointed by the President, by and with the advice and consent of the Senate. One of the members is to be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of the Board.

Federal Land Banks.

The Board is required, as soon as practicable, to divide the continental United States, excluding Alaska, into twelve districts, apportioned with due regard to the farm loan needs of the country, which shall be known as

Federal Land Bank Districts, and to establish in each of said districts a FEDERAL LAND BANK (Sec. 4). Each of these banks must have, before beginning business, a subscribed capital of not less than \$750,000, divided into shares of \$5.00 each, which may be subscribed for and held by any individual, firm or corporation, or by the government of any state, or of the United States. No dividends shall be paid on the stock owned by the U. S. Government, but all other stock shall share in dividend distributions without preference (Sec. 5). Each National Farm Loan Association and the United States Government are entitled to one vote for each share of stock held by them or it respectively. No other shareholder is permitted to vote (Sec. 5).

The Federal Farm Loan Board is to designate five directors who shall temporarily manage the affairs of each Federal Land Bank, and who shall prepare an organization certificate which, when approved by the Federal Farm Loan Board and filed with the Farm Loan Commissioner, operates to create the bank a body corporate, with the powers enumerated in the Act (Sec. 4). It is made the duty of the Federal Farm Loan Board to open books of subscription for the capital stock of a Federal Land Bank in each Federal Land Bank district, and if within thirty (30) days thereafter any part of the minimum capitalization of \$750,000 of any such bank shall remain unsubscribed, it is made the duty of the Secretary of the Treasury to subscribe the balance on behalf of the United States (Sec. 5). The act imposes no liability upon the shareholders beyond the amount of their respective subscriptions to the stock.

The amending act of January 18th, 1918, which authorizes the Secretary of the Treasury during the years 1918 and 1919 to purchase bonds issued by Federal Land Banks, provides that the temporary organization of any such bank provided for in Section 4, shall be continued

so long as any Farm Loan Bonds purchased from it under the provisions of the amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by National Farm Loan Associations shall equal the amount of its stock held by the United States Government. When these conditions are met, the permanent organization provided for in Section 4 is to take over the management of the bank. This permanent organization consists in a Board of Directors composed of nine members, each holding office for three years, six of whom, to be known as Local Directors, shall be chosen by, and be representative of, National Farm Loan Associations, and the remaining three directors, to be known as District Directors, shall be appointed by the Federal Farm Loan Board, one of whom shall be designated by it Chairman of the Board, and who shall represent the public interest.

The Federal Land Banks are empowered to invest their funds in the purchase of qualified first mortgages on farm lands situated within the Federal Land Bank District within which they are organized or acting (Sec. 13, par. 2).

National Farm Loan Associations.

Loans on farm mortgages are to be made to co-operative borrowers through the organization of corporations to be known as National Farm Loan Associations, by persons desiring to borrow money on farm mortgage security under the terms of the Act. Ten or more natural persons who are the owners or about to become the owners of farm land qualified as security for mortgage loans, and who desire to borrow money on farm mortgage security, may unite to form a National Farm Loan Association by complying with the provisions of Section 7 of the Act.

The articles of association when presented to the Federal Land Bank shall be accompanied by the written

report of a Loan Committee appointed in conformity with the Act, and by proof that each of the subscribers is the owner, or is about to become the owner, of farm land, qualified under Section 12 as the basis of a mortgage loan; that the loan desired by each person is not more than \$10,000, nor less than \$100, and that the aggregate of the desired loan is not less than \$20,000; it must also be accompanied by a subscription to stock in the Federal Land Bank equal to five per centum (5%) of the aggregate sums desired on mortgage loans (Sec. 7). The Federal Land Bank must then have an appraisal made of the land, and report to the Federal Farm Loan Board its recommendation, upon which, if favorable, the Board shall grant a charter to the applicants, designating the territory in which the proposed association may make loans, whereupon the association is authorized and empowered to receive from the Federal Land Bank of the district sums loaned to its members under the terms and conditions of the Act. Thereafter any National Farm Loan Association may secure for any of its members a loan on first mortgage from the Federal Land Bank of the district; but, in connection with such application, it must subscribe and pay in cash for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, such stock to be held by the Land Bank as collateral security for its repayment, the association receiving any dividends accruing and payable on said stock while it is outstanding. Upon the payment of the mortgage loan the stock shall be retired. No persons but borrowers on farm land mortgage shall be members or shareholders of National Farm Loan Associations. Each shareholder is entitled to one vote for each share held by him at the elections of directors and other shareholders' meetings, provided no one shareholder shall cast more than twenty (20) votes. Shareholders in the National Farm Loan Associations are made individually responsible equally

and ratably for the debts of the Association, to the extent of the amount of stock owned by them respectively at its par value, in addition to the amount paid in and represented by their shares (Sec. 9).

Whenever any National Farm Loan Association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank in its district, it must subscribe for capital stock of the Land Bank to the amount of five per cent. (5%) of such loan, the subscription to be paid in cash upon the granting of the loan. Such capital stock shall be held by the Land Bank as collateral security for the repayment of the loan, but the Association shall be paid any dividends accruing and payable on the capital stock while it is outstanding. Such stock may, in the discretion of the directors and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and shall be so retired upon full payment of the mortgage loan. In such event, the National Farm Loan Association must pay off at par and retire the corresponding shares of its stock which were issued when the Land Bank stock so retired was issued; but it is further provided that the capital stock of the Federal Land Bank shall not be reduced under an amount less than five per cent. (5%) of the principal of the outstanding Farm Loan Bonds issued by it (Sec. 7). The shares in National Farm Loan Associations shall be of the par value of \$5.00 each. No persons but borrowers on farm land mortgages may be members or shareholders of a National Farm Land Association.

Any person desiring to secure a loan through a National Farm Loan Association under the provisions of the Act shall make application for membership and shall subscribe for shares of stock in such Farm Loan Association, to an amount equal to 5 per cent. of the face of the desired loan, to be paid in cash on the granting of the loan. Upon such payment, the applicant becomes the

owner of one share of stock in said Loan Association for each \$100 of the face of the loan. Such stock shall be paid off at par and retired upon full payment of the loan. It shall be held by the Association as collateral security for the loan, but the borrower shall be entitled to any dividends accruing and payable on the stock while it is outstanding (Sec. 8). Any person desiring to secure a loan through a National Farm Loan Association may at his option borrow from the Federal Land Bank, through such association, the amount necessary to pay for shares of stock subscribed for by him in the National Farm Loan Association, such sum to be made a part of the face of the loan, and to be paid off in amortization payments (Sec. 9). After the subscriptions to the capital stock by a National Farm Loan Association shall amount to \$750,000 in any Federal Land Bank, said bank must apply semi-annually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original stock, twenty-five per cent. (25%) of all sums thereafter subscribed to the capital stock until such original capital stock is retired at par.

At least 25 per cent. of that part of the capital of any Federal Land Bank for which stock is outstanding in the name of National Farm Loan Association must be held in quick assets. Not less than 5 per cent. of such capital must be invested in U. S. Government Bonds (Sec. 5).

Federal Farm Loans.

The loans which Federal Land Banks may make upon first mortgages on farm lands are very carefully regulated and restricted by the provisions of Section 12 of the Act. These Banks, by Section 13 are empowered, subject to the limitations and requirements of the Act, to issue and sell Farm Loan Bonds of the kinds described in the Act, to invest funds in their possession in qualified

first mortgages on farm lands, to receive and to deposit in trust with the Farm Loan Registrar for the district, to be held by him as collateral security for Farm Loan Bonds, first mortgages upon farm land, qualified under Section 12, and, with the approval of the Federal Farm Loan Board, to issue and sell their bonds secured by the deposit of first mortgages on qualified farm lands as collateral, in conformity with the provisions of Section 18 of the Act. By the amendment of January 18, 1918, the Secretary of the Treasury was empowered during the years 1918 and 1919, to purchase Farm Loan Bonds issued by the Federal Land Banks to an amount not exceeding \$100,000,000 in each year, and any Federal Land Bank was authorized at any time to repurchase at par and accrued interest, for the purpose of redemption or resale, any of the bonds so purchased from it and held in the U. S. Treasury. It is also provided, that the bonds of any Federal Land Bank so purchased and held in the Treasury one year after the termination of the pending war shall, upon thirty (30) days' notice from the Secretary of the Treasury, be redeemed and repurchased by such Bank at par and accrued interest. By Section 15, it is provided that whenever, after the Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that National Farm Loan Associations have not been formed and are not likely to be formed, in any locality, because of peculiar local conditions, the Board may in its discretion authorize Federal Land Banks to make loans on farm lands through agents approved by the Board, on the terms and conditions and subject to the restrictions prescribed in that Section.

Joint Stock Land Banks.

Another and different class of corporations to accomplish the objects of the Act, to be known as Joint Stock Land Banks, is provided for in Section 16. The capital of these corporations must be provided wholly by private subscription. They are to be organized by not less than ten natural persons subject to the requirements and under the conditions set forth in Section 4 of the Act, so far as the same are applicable. The Board of Directors shall consist of not less than five members. Each shareholder shall have the same voting privileges as have holders of shares in national banking associations, and is subject to the same double liability for debts of the Bank as is imposed upon shareholders in National Banks. A Joint Stock Land Bank shall be authorized to do business when capital stock to an amount of at least \$250,000 has been subscribed, and one-half paid in cash, the balance remaining subject to call by the Board of Directors, and a charter issued by the Federal Farm Loan Board. Such a bank may not issue any bonds until after the capital stock is entirely paid up.

“Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable.”

(Sec. 16, par. 3.)

Federal Land Banks may issue Farm Loan Bonds up to twenty (20) times the amount of their capital and surplus (Sec. 14). Joint Stock Land Banks are limited to the issue of Farm Loan Bonds not in excess of fifteen (15) times the amount of their capital and surplus.

Joint Stock Land Banks can only loan on first mortgages upon land in the state where located or a state contiguous thereto. No loan on mortgage may be made by *any* Bank under the Farm Loan Act at a rate exceeding 6 per cent. per annum, exclusive of amortization

payments (Sec. 12, par. 3rd), and Joint Stock Land Banks in no case shall charge a rate of interest on farm loans exceeding by more than one per cent. (1%) the rate established for the last series of Farm Loan Bonds issued by them (Sec. 16), which rate may not exceed 5 per cent. per annum (Sec. 20). Federal Land Banks are authorized to charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees, not exceeding the actual cost of appraisal and the determination of title (Sec. 13, par. 9th). Joint Stock Land Banks shall in no case receive any commission or charge not specifically authorized by the Act.

Section 12 imposes very definite terms and conditions upon the making of loans by the Federal Land Banks.

Mortgages taken by Farm Loan Banks and Joint Stock Land Banks must contain agreements for the repayment of the loan on an amortization plan (Sec. 12, par. 2nd); the rate of interest charged on the loan is limited to six per cent. (6%), exclusive of amortization payments; and the loan shall not exceed fifty per cent. (50%) of the value of the land mortgaged, and twenty per cent. (20%) of the value of permanent insured improvements thereon. No loan shall be made except upon the favorable report of appraisers appointed by the Federal Farm Loan Board.

Farm Loan Bonds.

The provisions for the issue of Farm Loan Bonds secured by first mortgages on farm lands, or United States Government bonds, as collateral, which must be deposited with and held in trust by the Federal Farm Loan Registrar, are the same in the case of both the Federal Land Banks and the Joint Stock Land Banks. In each case, every step in the issue is made subject to approval of the Federal Farm Loan Board (Secs. 18, 19, 20, 22). The bonds are to be prepared and delivered to the banks by the Farm Loan Board (Sec. 20). The farm mortgages or U. S. bonds which constitute the collateral

security for the bonds, whether issued by Federal Land Banks or Joint Stock Land Banks, must be deposited with and held by the Farm Loan Commissioner (Secs. 18, 19). No bonds shall be issued except with the approval of the Federal Farm Loan Board, and upon the deposit of the mortgages securing the same with the Farm Loan Registrar (Sec. 19). The Federal Farm Loan Board may grant or refuse to any bank of either class, authority to make any specific issue of bonds (Sec. 17). By Section 16, bonds issued by the Joint Stock Land Banks are required to be so engraved as to be readily distinguishable in form and color from Farm Loan Bonds issued by Federal Land Banks, and otherwise to bear such distinguishing marks as the Federal Farm Loan Board shall direct. Such bonds issued by Joint Stock Land Banks are to be in form prescribed by Federal Farm Loan Board, and it must be stated in such bonds that the Bank is organized under Section 16 of the Act, is under Federal supervision, and operates under the provisions of the Act (Sec. 16). By Section 21, every Federal Land Bank in effect is made guarantor for the payment of all Farm Loan Bonds issued by all of the other Federal Land Banks, but the stockholders of such banks are not liable for its debts. In the case of Joint Stock Banks, no bank is liable for the debts of any other, but the stockholders have a double liability (Sec. 26).

Application of Amortization Payments.

By Section 22, amortization and other payments on the principal of first mortgages held by the Farm Loan Registrar as collateral security for the issue of Farm Loan Bonds constitute a trust fund in the hands of the Federal Land Banks or Joint Stock Land Banks receiving the same, and shall be invested only as presented in the Act, in Farm Loan bonds, first mortgages on farm lands or United States bonds.

Securities so purchased must forthwith be deposited with the Federal Farm Loan Registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Section 23, respecting the creation of reserves, applies equally to Federal Land Banks and Joint Stock Land Banks, and authorizes the declaration of dividends to shareholders of the respective banks of the balance of net earnings after creating the required reserves.

Tax Exemption.

Section 26 provides as follows:

"That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks and farm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

"Nothing herein shall be construed to exempt the real property of federal and joint stock land banks and national farm loan associations from

either State, county or municipal taxes to the same extent according to its value as other real property is taxed."

Farm Loan Bonds Trust Investments.

By Section 27, Farm Loan Bonds issued under the Act by Federal Land Banks or Joint Stock Land Banks are made lawful investments for all fiduciary and trust funds, and may be accepted as security for all public deposits. Any member bank of the Federal Reserve System is authorized to buy and sell Farm Loan Bonds issued under the authority of the Act, and any Federal Reserve bank may buy and sell Farm Loan Bonds issued under the same, to the same extent and subject to the same limitations as are placed upon the purchase and sale by said banks of State, county, district and municipal bonds by Subdivision b, Section 14, of the Federal Reserve Act.

Receivership.

By Section 29, in the event of insolvency or default in the payment of any obligation, Federal Land Banks and Joint Stock Land Banks respectively are made liable to receivership at the direction of the Farm Loan Board.

Treasury Deposits in Federal Land Banks.

Section 32 authorizes the Secretary of the Treasury to make deposits for the temporary use of any Federal Land Bank out of money in the Treasury not otherwise appropriated, provided the aggregate of such deposits shall not at any one time exceed the sum of Six million dollars (\$6,000,000).

B.

Extract from Annual Report of the Secretary of the Treasury (Hon. Carter Glass) for the year 1919, dated November 20th, 1919:

"The Federal farm-loan system has operated effectively and successfully during the past year, amply justifying the great purpose for which it was created and meeting the expectations of its advocates. The Federal land banks have continued to make loans to farmers at $5\frac{1}{2}$ per cent. per annum, and the joint stock land banks at 6 per cent. All loans, as provided by the act, have been made on the amortization plan, the borrower making a fixed payment, annually or semi-annually, which is at least 1 per cent. in excess of the interest charge, such excess being applied on the principal. As the balance of the principal due decreases the proportion of this level payment absorbed by the interest charge correspondingly decreases and a constantly increasing balance is applicable to the extinguishment of the debt. This principle, while familiar to actuaries and statisticians, had not been applied in this country to individual mortgages to any appreciable extent prior to the enactment of the Federal farm-loan act in July, 1916. The great success of the farm-loan system has called attention to the advantages of this method of paying debts, and the application of the amortization plan to all mortgages, urban and rural, is now being actively urged by influential private organizations.

"During the 12 months ended September 30, 1919, loans were made by the Federal land banks to the farmers of the United States to the aggregate amount of \$129,271,662, an increase of \$10,742,839 over the corresponding period a year ago,

and making a total of loans by the Federal land banks from the inception of the system in March, 1917, of \$261,175,346. The subjoined table indicates the amount of the loans made by each of the banks in the years referred to and in the aggregate:

District.	Federal land bank.	Loans made Oct. 1, 1917, to Sept. 30, 1918.	Loans made Oct. 1, 1918, to Sept. 30, 1919.	Aggregate of loans made from date of organization in March, 1917, to Sept. 30, 1919.
1.	Springfield, Mass....	\$4,999,630	\$4,738,200	\$9,913,545
2.	Baltimore, Md.....	4,323,150	5,277,550	10,401,600
3.	Columbia, S. C.....	6,198,905	7,361,150	13,891,045
4.	Louisville, Ky.....	7,490,700	9,460,700	17,959,900
5.	New Orleans, La....	8,800,135	8,722,715	18,192,505
6.	St. Louis, Mo.....	8,166,065	12,149,270	20,895,940
7.	St. Paul, Minn.....	17,380,500	14,886,100	33,605,900
8.	Omaha, Nebr.....	14,418,050	20,267,450	35,390,290
9.	Wichita, Kans.....	10,292,922	9,045,000	23,311,800
10.	Houston, Tex.....	11,264,287	16,885,787	28,666,561
11.	Berkeley, Calif.....	7,315,800	6,019,400	14,065,400
12.	Spokane, Wash.....	17,878,679	14,458,340	34,880,850
Total		118,528,823	129,271,662	261,175,346

"There have been 27 joint stock land banks incorporated by private capital under the terms of the act, with aggregate capital of \$8,500,000. Nineteen of these banks were incorporated during the past year, and therefore can not be said to be, as yet, in full and active operation. The loans made by the joint stock land banks aggregate \$41,787,359, which added to the loans of the Federal land banks makes a total of \$302,963,705 lent to farmers by all of the banks composing the system. The banks of this character have grown very strikingly in number and in volume of business during the past year. Owing to the fact that they were not established until after the Federal land banks, and that for some time there were only a few in operation, their loans represent only 14 per cent. of the total, but during one or more recent months they have transacted as high as 30 per cent. of the whole volume of business of the system. Notwith-

standing this division of the field, the Federal land banks have done a larger volume of more desirable business than in the previous year, the membership of existing farm-loan associations has grown, and over 600 new associations have been organized.

"A very gratifying feature of the year is the remarkable improvement in the financial position of the Federal land banks. During the first year of their existence, and part of the second year, they necessarily operated at a loss. This was inevitable, and was anticipated by the proponents of the system and those who were familiar with the business. The 12 banks opened in the spring of 1917 with an aggregate capital of \$9,000,000, of which \$8,892,130 was subscribed by the Government and \$107,870 by individuals. Before the close of the first year over \$600,000 of this original capital had been absorbed by the excess of organization and current expenses over the scanty receipts of that period. By January 31, 1919, this amount had been made good out of earnings. Under the provision of the Federal farm-loan act that after subscriptions to capital stock by farm-loan associations shall amount to \$750,000 in any Federal land bank, one-fourth of all sums thereafter subscribed shall be applied to the payment and retirement of the stock originally subscribed, eight of the banks had, up to November 15, 1919, paid and retired \$1,198,890 of the stock originally subscribed by the Government, thereby reducing the amount of stock held by the Government on that date to \$7,693,240. Notwithstanding such retirement of stock originally subscribed, the aggregate capital stock of the 12 banks increased from \$9,000,000 at the start to \$21,321,687 on November 15, 1919.

"Up to October 31, 1919, the net earnings of the 12 banks amounted to \$1,278,394.41, of which \$202,175 had been carried to reserve account, \$332,923.98 distributed in dividends paid by five banks upon stock owned by farm-loan associations and

individuals, and \$743,295.43 is still carried as undivided profits.

"Another gratifying feature, testifying alike to the security of the loans made, and ability and willingness of the borrowers to make payment, and the efficiency of the collection machinery of the banks, is the unusually small total of delinquencies. To September 30, 1919, payments due by borrowers to the banks had accrued to the amount of \$12,-666,313.61. Of this sum, the amount remaining unpaid on that date was only \$172,456.72, or 1.4 per cent. of the total. Of that amount \$86,816.60 was 30 days or less overdue, \$25,182.05 from 30 to 60 days, \$14,872.85 from 60 to 90 days, and only \$45,-585.22 over 90 days overdue. This record has been made notwithstanding widespread disaster to crops in several sections of the country.

"The Federal farm-loan act provides that 'the salaries and expenses of the Federal farm-loan board and the farm loan registrars and examiners * * * shall be paid by the United States.' The system is now so well established and is in such financial condition that this assistance from the Government, in the judgment of the Federal farm loan board, concurred in by officers of the banks, is no longer necessary or desirable. The board accordingly has recommended that beginning with the fiscal year 1921 its expenses be provided for by assessments against the Federal land banks and the joint stock land banks in proportion to their gross assets. Measures for this purpose have been introduced in both houses of the Congress and, should the plan be adopted, the Government will be relieved entirely from the payment of the expenses involved. To have put the system on such a basis in three years is a very gratifying and satisfactory result.

"The primary purpose of the Federal farm-loan system, as expressed in the title of the act creating it, was 'to provide capital for agricultural development.' The accomplishment of that purpose necessarily involved the possibility of an enhancement of farm-land values. In so far as such enhancement was based upon increased production or added

attraction to farm life, it was legitimate and desirable. Indeed, there were many sections of the country where, owing either to the exodus of young men from the farms to industrial pursuits in the towns, or to local and peculiar conditions, farm lands were selling at prices much below their intrinsic value as measured by productive capacity. Any enhancement in land values in these sections which might incidentally result from the operation of the Federal farm-loan system was a general public benefit, as tending to check the urban drift of population and stimulate the local production of foodstuffs. The Federal Farm Loan Board has had in view from the start, however, the importance of guarding the system from complicity in anything approaching speculation in farm lands or such enhancement in their values as would either make them more difficult for men of small means to acquire or add to the overhead cost of producing foodstuffs. The high prices realized by growers for their crops during the war period were naturally reflected in a general increase in land values, but the first indication of any rapid or speculative rise did not manifest itself until a few months ago, when it appeared in some sections of the Middle West. It was claimed, perhaps correctly, in a recent convention of private loaning agencies, that the advances in this section were justified and will be permanent. The Federal Farm Loan Board, however, has thought that in the public interest, and in pursuance of the policy of conservatism which they have always followed, it would be better to follow this movement at a safe distance than to be part of it. They, therefore, issued instructions under date of May 3, 1919, to the banks under their supervision that where sales had taken place within a year at prices materially in excess of previous values such sales were not to be taken into account in the appraisement of the land, and under date of July 7, 1919, that no loans in excess of \$100 an acre were to be made on land used for general agricultural purposes, even where the appraisement was \$300 or \$400 an acre."

C.

(593)

Treasury Department
Federal Farm Loan Bureau.

CONSOLIDATED STATEMENT OF CONDITION OF THE JOINT STOCK LAND
BANKS AT THE CLOSE OF BUSINESS AUGUST 31, 1920.

Assets.

Net Mortgage Loans (Unpaid Principal).....	\$79,209,884.14
Accrued Interest on Mortgage Loans (uncollected).....	1,455,543.40
U. S. Government Bonds and Securities.....	3,132,089.63
Accrued Interest on Bonds and Securities.....	48,472.31
Farm Loan Bonds on Hand (unsold).....	15,584,200.00
Cash on Hand and in Banks.....	1,348,518.56
Accounts Receivable	86,285.74
Delinquent Amortization Instalments.....	57,937.14
Banking House	247,000.00
Furniture and Fixtures.....	33,266.00
Other Assets	387,127.18
Total Assets	\$101,590,324.09

Liabilities.

Capital Stock Paid In.....	\$8,352,750.00
Surplus Paid In.....	115,250.00
Reserve (from earnings).....	127,601.61
Farm Loan Bonds Authorized.....	75,673,500.00
Accrued Interest on Farm Loan Bonds (unmatured).....	1,249,988.74
Bills Payable (Money and Bonds borrowed).....	14,990,065.95
Accounts Payable	365,372.63
Reserved for Interest on Farm Loan Bonds (matured but not paid)	60,665.02
Other Liabilities	632,160.29
Undivided Profits	22,969.85
Total Liabilities	\$101,590,324.09

D.

(585)

Treasury Department
Federal Farm Loan Bureau.CONSOLIDATED STATEMENT OF CONDITION OF THE TWELVE FEDERAL LAND
BANKS AT THE CLOSE OF BUSINESS AUGUST 31, 1920.*Assets.*

Net Mortgage Loans (Unpaid Principal).....	\$346,507,855.16
Accrued Interest on Mortgage Loans (uncollected).....	6,208,828.31
U. S. Government Bonds and Securities.....	7,583,227.77
Accrued Interest on Bonds and Securities (uncollected)...	94,819.36
Other Accrued Interest (uncollected).....	75,088.32
Farm Loan Bonds on Hand (unsold).....	3,855,000.00
Cash on Hand and in Banks.....	5,211,170.52
Accounts Receivable	44,098.92
Delinquent Amortization Payments.....	304,355.59
Banking House	151,494.14
Furniture and Fixtures.....	159,650.64
Other Assets	222,082.74
Total Assets	\$370,417,671.47

Liabilities.

Capital Stock:	
United States Government.....	\$6,832,680.00
National Farm Loan Associations.....	17,502,667.50
Borrowers through Agents.....	74,890.00
Individual Subscribers	18,735.00
Total Capital Stock.....	\$24,428,972.50
Reserve (from earnings).....	766,900.00
Farm Loan Bonds Authorized.....	331,350,000.00
Accrued Interest on Farm Loan Bonds (unmatured)....	5,118,204.49
U. S. Government Deposits.....	5,950,000.00
Bills Payable (Money and Bonds borrowed).....	500,000.00
Accounts Payable (Deferred payments on loans in process of closing)	94,764.71
Reserved for Interest on Farm Loan Bonds (matured but not paid)	97,222.13
Other Liabilities	522,849.98
Undivided Profits	1,588,757.66
Total Liabilities	\$370,417,671.47

MEMORANDA.

Net Earnings to August 31, 1920.....	\$3,517,694.68
Less Dividends paid to August 31, 1920.....	1,043,665.75
Carried to Reserve Acct. to August 31, 1920..	\$766,900.00
Carried to Suspense Acct. to August 31, 1920.	118,371.27
Carried to Undivided Profits to Aug. 31, 1920	1,588,757.66
Total Reserves and Undivided Profits Aug. 31, 1920.....	2,474,028.93
Capital Stock originally subscribed by U. S. Government.	\$8,892,130.00
Amount of Government Stock retired to August 31, 1920.	2,059,450.00
Capital Stock held by U. S. Government August 31, 1920..	\$6,832,680.00

E.

Extract from statement made by Mr. W. W. Powell, Secretary of the American Association of Joint Stock Land Banks, before the Committee on Banking and Currency of U. S. Senate, January 12, 13, 1920:

"If the joint-stock land banks have any advantage in any particular over the Federal land banks, that advantage lies in the opportunity afforded to deal directly with the borrower.

"It is interesting to note what are the results of having the two types of banks operate in the same field. The following shows the actual competition in the loans examined for all the joint-stock land banks by the Farm Loan Board to November 13, 1919:

"Loans of \$10,000 or more: Number, 2,278, for \$38,911,464; average \$17,000.

"Loans of less than \$10,000: Number, 3,869, for \$16,853,730; average \$4,300.

"Total number, 6,147, for \$55,765,184; average \$9,000.

"Percentage of loans under \$10,000, 30 per cent. plus.

"Total loans by Federal land banks October 1, 1919: Number, 103,672, for \$271,317,000; average loans, \$2,600 plus.

"Now we come to the interest of the money lender. Approximately \$9,000,000 have been invested in the stock of joint-stock land banks. These investors entered this particular field to conduct a farm-loan business under the supervision of the Government, not because it offered a large return—for the return is much smaller than in the unregulated farm-loan field—but because they assumed that the time had arrived when the Government was in earnest and contemplated providing the financial machinery which would make it possible for the farmer to get adequate and essential money at low rates, and because they assumed also that the provisions contained in the farm-loan act

were permanent in their nature. In a word, they assumed that the day of the farm-mortgage broker, with his high rates and excessive commissions, was ended. Accordingly they felt that as they would be compelled, sooner or later, either to retire from the field or to submit to regulation, it was well to enter upon the new order at once and to get their business adjusted at the earliest moment to the new and permanent conditions. These investors recognized that if they did not enter the farm-loan system as joint-stock land banks, those who did organize as joint-stock land banks would run the old mortgage broker out of business. They could have continued to operate as farm-mortgage bankers, if their only competition had been the Federal land bank with its new, mutual or co-operative credit plan; but they knew they could not continue at the old high rates of interest and with the old exorbitant commissions against the keener and more active competition of the privately owned joint-stock land banks.

"Now, with regard to the profits. Joint-stock land banks have no source of income other than from first-mortgage loans, from Government securities, and from premiums on the sale of their bonds. They can not charge the borrower a rate of interest in excess of 1 per cent. above the rate of their bonds bear. That limits the banks to a margin of 1 per cent. Under the law, joint-stock land banks cannot issue bonds in excess of fifteen times their capital. Thus, we see that from the making of mortgage loans, joint-stock land banks cannot legally derive a gross income in excess of 21 per cent. (all expense of operation must be paid out of this) on its invested capital; that it, 6 per cent. on the capital stock itself and 1 per cent. on each of the 15 turnovers of the capital through the issuance and sale of bonds, and this amount of gross income presupposes the continuous working of every dollar or capital all the time, an impossibility without question. The income from premiums on bonds sold is uncertain, when there is any

premium at all. Of the highest premium thus far received, 75 per cent. was absorbed in the cost of marketing the bonds, and about 12½ per cent. was absorbed in printing and other costs of issue.

"Out of its income, joint-stock banks must pay their operating expenses, including taxes (for, contrary to popular opinion, these banks are subject to certain taxes—State taxes on their capital stock, income taxes and revenue taxes on the notes on which they borrow money) and must build up the reserves required by law, before they can pay any dividends whatsoever.

* * * * *

"The right to issue tax exempt farm mortgage bonds is predicated upon a service to the general public.

"The Government's right to exempt such bonds from taxation can be exercised only in the interest of the general welfare. It is not as a subsidy to a particular class of farmers; it is an aid to agriculture, as a stimulus to production, that these bonds are exempted from taxation.

"All will agree that the long-term amortized loan could not be made available to the farmer excepting by the issue of bonds, and prevailing conditions in the money market show that a low rate of interest on these bonds can be assured only by exempting the bonds from taxation. If any great amount of farm loan bonds is to be sold, the sales must be effected in the market under conditions which will appeal to the investor. Farm-loan bonds, therefore, have to meet the competition of municipal bonds and other tax-exempt securities, of which New York City alone has a funded debt of \$1,450,000,000 now totally exempt from taxes. If farm-loan bonds were to be subject to taxation, then they would have to bear a higher rate of interest, and the farmers would have to pay a correspondingly higher rate of interest. For this reason in particular, it was decided by the Congress that farm-loan bonds should be tax exempt.

"Farm loan bonds make a liquid security of the

farm mortgage. Heretofore the size or amount of a farm mortgage made it an unwieldy thing to handle in the market. The fact that the security could not be examined readily by other parties than those originally making the loan also interfered with its sale. But when the Federal farm loan act was passed and all farm mortgages were appraised by representatives of the Farm Loan Board, and values thus determined, safeguarded, and, in effect, guaranteed, it was possible to issue against these farm mortgages bonds of varying denominations to suit the convenience of investors. So that now, instead of an investor being asked to buy a \$5,000 farm mortgage, and having to wait until he had \$5,000 before he could make the purchase, under the new system he is asked to buy a \$500 farm mortgage bond, or possibly a \$100 farm mortgage bond, and he can buy it whenever he has the \$100 or the \$500. And all this makes of farm mortgages, for the first time in the history of this country, liquid securities that pass current as do the securities of municipal and other corporations.

"By this plan vast sums of money have been released for agricultural uses which never could have been made available had it not been for the fact that farm securities are now liquid and can be handled conveniently and with dispatch by banks and other investors. The effect of this has been to secure the farmer his money at greatly reduced rates of interest. The reduction in these rates already has been shown. The purposes of the farm loan act is being served. Capital is being provided for agricultural development. Rates of interest have been reduced. The farmer is getting his money cheaper and at relatively lower rate of interest than ever before."

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

CHARLES E. SMITH, PLAINTIFF,	} No. 593.
v.	
KANSAS CITY TITLE & TRUST COMPANY, et al., defendants.	

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

STATEMENT.

This case involves the constitutionality of the act of Congress approved July 17, 1916 (39 Stat. 360), as amended January 18, 1918, known as "the Federal farm loan act." The text of the act is printed in the appendix hereto attached, marked "Exhibit A."

The main question is whether Congress had the power to create (a) the Federal land banks, (b) the joint-stock land banks, and (c) to exempt the bonds which both classes of banks are authorized to issue from Federal, State, local, and municipal taxation.

This brief is filed by permission of the court by the United States as *amicus curiæ* because of the public interest in the questions involved.

THE FACTS.

The plaintiff is a stockholder in the defendant trust company and brought this action to restrain the defendant trust company from investing its funds in farm-loan bonds issued by Federal land banks and by joint-stock land banks. The grounds of the action as alleged in the bill are that there is no authority in the Constitution for the creation either of Federal land banks or of joint-stock land banks, and no power to authorize the issue of farm-loan bonds by either class of banks and further that the provisions contained in the act for the exemption of such bonds from Federal and State taxation are invalid and unconstitutional. The Federal Land Bank, of Wichita, Kans., and the First Joint-Stock Land Bank, of Chicago, Ill., petitioned to intervene and have been made parties defendant in the action on behalf of all the other Federal land banks and joint-stock land banks, respectively, as enumerated in the complaint. The United States also was heard as *amicus curiæ* in the action.

The cause came on to be heard and after oral argument the defendant's motion to dismiss the bill of complaint on the ground that it did not state facts sufficient to constitute a cause of action in equity was granted by the court, which, after delivering an oral opinion, dismissed the bill for want

of equity on October 31, 1919. On the same day the plaintiff filed a petition for appeal, which was allowed, and the assignments of error duly filed.

HISTORY OF THE FEDERAL FARM LOAN ACT.

Prior to 1913 there had been discussed for many years in Congress and throughout the country generally the necessity for a revision of the Federal banking and currency laws. While the movement was popularly and properly referred to as one of currency or monetary reform, it sought to achieve such result by dealing also with a reform of the general credit system of the Nation. Establishment of a system of credits which would be flexible and responsive to the needs of commerce and industry and as far as possible to the demands of the agricultural interests of the country, was imperatively demanded.

In 1913 Congress, at a special session, took under consideration what is known as the Federal reserve act, which, after protracted debate, became a law on December 23, 1913 (38 Stat. 251). In the course of the discussions of that measure the needs of agriculture and the necessity to consider them in connection with the financial system were brought forth with great impressiveness, but it was recognized that in the creation of a commercial credit system, which was the primary purpose of the Federal reserve act, it was not practicable to incorporate provisions suitable to the long-term credits of the character which the farmers needed.

Until the passage of the Federal reserve act, the national banks were not permitted by law to make loans upon real estate security. The congressional objection to this type of security seems to have been directed not against its sufficiency but against its kind. As the obligations of national banks, as well as those of other commercial credit institutions, are payable at short dates, it is necessary that the securities held by them shall be readily convertible into money; and while a mortgage on real estate may be good security, obviously it can not be made immediately available in case of an emergency. Personal securities of the kind usually taken by banks can be quickly assigned and promptly liquidated, but the transfer of any interest in real estate always involves more or less delay.

The total disability of the national banks to loan on real estate security was removed by the Federal reserve act. That statute authorizes national banks to loan on farm-land mortgages up to five years and on other real estate up to one year, subject, however, to the proviso that the aggregate of such loans by any one bank shall not exceed 25 per cent of its capital and surplus or one-third of its time deposits (sec. 24).

In dealing with the short-term credit needs of the farmer Congress authorized the Federal reserve banks to discount notes, drafts, or bills of exchange drawn or issued for agricultural purposes and having a maturity not exceeding six months. (Federal reserve act, sec. 13.) There is nothing

in this provision incompatible with the successful operation of a commercial credit bank and for this reason it has been availed of with considerable success by agricultural borrowers. The Federal reserve act also provided short-time credits to enable the farmer to carry his crop after harvest for a reasonable time by making notes, drafts, and bills of exchange secured by staple agricultural products eligible for rediscount by Federal reserve banks. (Federal reserve act, sec. 13.)

With respect to long-time loans, however, the situation is quite different. The relief afforded by the Federal reserve act was inadequate for three reasons: First, because of the incompatibility of long-term loans with commercial-credit institutions; second, because of the limited amount of money made available by the act for loans of this character; and, third, because the duration of such loans was limited to five years. The fact that after the passage of the Federal reserve act the national banks were permitted to make loans on real estate security did not in itself make such loans attractive or desirable; nor did it, of course, remove the unliquid character of real estate security. Moreover, the amount of money which the act permitted any national bank to lend upon this character of security was expressly limited to 25 per cent of its capital and surplus or one-third of its time deposits. In connection with this feature, Senator Fletcher, speaking on the floor of the Senate, said

(Congressional Record, p. 3547, 64th Cong., 1st sess.):

If every national banking association so authorized took advantage of this privilege, there would only be available for farm loans not exceeding \$450,000,000 for the entire country, whereas the outstanding farm mortgages now amount to over \$2,000,000,000.

Finally, it is obvious that loans of only five years' duration are wholly inadequate to take care of the needs of any but the most prosperous farmers. Many agricultural investments require more than five years in which to fructify, even under the most favorable conditions. This is particularly true in the fruit-growing industry. Even in other branches of agriculture, where under ordinary circumstances the original investment may be recouped within five years, there are always crop failures, frequently due to causes beyond the farmer's control, to be reckoned with. (Senate Rept. No. 144, 64th Cong., 1st sess.)

It thus appears that while prior to the passage of the Federal reserve act the national banks had neither the power nor the inclination to make long-term loans on farm land security, after the passage of the act they had partial power but still no inclination.

The farmers were under similar difficulties with respect to obtaining loans from State banks. While there has been no general legal inhibition against

these banks making loans upon real estate security, still as a practical matter, such loans have been no more practicable for State banks than for national banks. Even mutual savings banks have shown a similar disinclination to make long-term loans to the farmers. (Senate Report 144, 64th Congress, 1st sess.) Generally speaking, the farmers have had to do their borrowing from so-called mortgage bankers with whom their experience has been anything but satisfactory. Statistics gathered by the Department of Agriculture and incorporated in the report of the Senate Finance Committee, show that the rate of interest upon land mortgages varied in different sections over the country, the average by States ranging from 5.3 to 10.5 per cent, the average rate for the whole country being about 7.5 per cent. A tabulation of these statistics is printed in the appendix hereto and marked "Exhibit C." While it is true that the farmers have the protection of the usury laws of the various States, experience has shown that these laws, because of the exaction of commissions, fees, etc., by the lenders, have never afforded complete relief. The statistics just referred to, showing the average interest rates actually charged the farmer, are eloquent testimony of the fallibility of the usury laws.

In addition to having to pay high rates of interest the farmers of the country have never been able to obtain loans of sufficient duration to permit them to reasonably amortize their debts. Nor has there been an adequate credit market for farmers desir-

ing to make long-term loans and especially for farmers desiring to borrow amounts of less than \$1,000. The effect of this was distinctly retarding to the development of agriculture.

Farming is the greatest industry in the United States. The value of our farm products for 1910 (the last year in which the national census was taken) exceeded \$9,000,000,000. Their value for 1919 is estimated by the Secretary of Agriculture to be \$23,873,000,000, or an increase of 158 per cent. (Report of Secretary of Agriculture for 1919.) The productive land of the Nation as of the year 1910 was put at 878,789,000 acres, or 46 per cent of the total acreage of the country (1,903,269,000), of which the amount actually cultivated was only 293,794,000, or about 15 per cent of the total acreage. (1910 Agri. Census.)

The agricultural population in the year 1910 amounted to 12,567,925, or 32 per cent of all persons of the country engaged in business. The aggregate wealth of the farmers was \$40,991,490,090, and their total indebtedness was estimated at \$6,000,000,000, approximately one-half of which was secured by mortgages.

The ability to secure capital upon reasonable terms is essential to the success of any business, and farming is especially embraced within the rule. The successful farmer becomes more of a business man each year. He must use more machinery, buy more fertilizer, and sow better seed. He must erect better buildings, raise better stock, and grow better crops. He must store his produce

in order to sell in the high market; he must pay cash in order to buy cheap. In addition, he requires capital for additions and betterments. So it was that prior to the passage of the Federal farm loan act the farmers of the country, though engaged in its greatest industry and needing credit quite as urgently as those engaged in other industries, yet were unable to secure an adequate supply and to obtain it at anything like the same rate or even reasonable rates of interest. The position of the farmer was thus summarized by Senator Hollis in the report of the Senate Finance Committee (Senate Rept. No. 144, 64th Cong., 1st sess.):

The farmer applies to the nearest bank for a loan and offers his farm as security. The banker makes excuses. He doesn't know the farmer; he doesn't know the value of his farm; he doesn't like to tie his demand deposits up in long-term loans; his commercial customers, who carry a substantial line of deposits, have the first claim. These excuses are well founded.

There may be additional excuses not so genuine, such as the scarcity of money, the hard hearts of the directors, unusual demands for loans, and the like. If the farmer gets a loan at all, he pays a high rate or he must be subject to foreclosure on short notice. He usually pays some one a large commission; he is subject frequently to substantial renewal fees; he is sometimes compelled to pay taxes on the mortgage as

well as on the land; and he finds himself in the power of some hard-headed banker. He can not complain of this; it is the business of the banker to be hard-headed.

In many parts of the country the farmer is charged extortionate and inexcusable rates of interest, regardless of usury laws and a decent regard for human necessities. He has a real grievance here.

But, continues Senator Hollis:

The American farmer does not come to Congress with a hard-luck story. He does not ask the Government to bestow on him the public money that all the people have contributed in taxes. He does not demand that the Government become a banker in order to borrow money on bonds and loan the proceeds to him. He merely calls attention to the fact that farming has become a business demanding large amounts of capital; he points out the undoubted excellence of the security he offers; and he demands legislation that shall put it in the power of those who are interested, and those who have money to invest, to extend to him the credit he requires. *He desires the Government to authorize a system of land banks which shall duplicate for him the facilities now commanded by men engaged in manufacturing, in transportation, and in commerce.*

Our failure to make proper provision for a rural credits system has undoubtedly left its mark upon the agricultural development of the country.

Great as that development has been, nevertheless statistics presented to Congress show that while from 1850 to 1880 the agricultural population had more than kept pace with the total population, it had on the whole failed to do so since 1880. (Abstract of the Census, 1910, p. 280.) Between 1900 and 1910 the total population of the United States increased 21 per cent; the urban population increased 34.8 per cent, and the rural population increased only 11.2 per cent. In 1880 the rural population of the United States was 70.5 per cent of the whole, while in 1910 it was only 53.7 per cent. The tenant farmers in 1880, constituting 25 per cent of the total, in 1910 had increased to 37 per cent. These statistics, which were submitted to the Senate by Senator Fletcher, are printed in the appendix hereto marked "Exhibit D."

Strikingly different from the situation existing in our own country was that found to exist in the countries of continental Europe. Exhaustive data on this subject was collected by the American and United States commissions, appointed to investigate European rural credit systems, and is available in printed form in Senate Document No. 214. It is sufficient for present purposes to state that the report referred to discloses that in every progressive country of Europe there have been in existence for many years banks or similar institutions which make a business, under Government supervision, of affording credit upon reasonable

conditions to the agricultural population of these countries. A summary of the rural situation in foreign countries is included in the appendix marked "Exhibit E."

It became imperative, therefore, that, in addition to the short-time agricultural credits provided by the Federal reserve act, long-time amortization mortgage loans or credits should be provided for the stimulation and development of agriculture—the very basis of the general welfare—and the Federal farm loan system was created by Congress to meet this national need.

ANALYSIS OF THE FEDERAL FARM LOAN ACT.

The Federal farm loan act approved July 17, 1916, is entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositories and financial agents for the United States, and for other purposes."

The first purpose of the act was to develop agriculture by affording to those engaged in farming or who desired to engage in that occupation a much greater volume of land credit on more favorable terms and at materially lower and more nearly uniform interest rates than were previously available.

The act provides for two general types of organizations—one in its nature mutual or cooperative

and the other privately controlled, or, as designated in the act, "joint stock." The cooperative system is designated as the Federal land bank system and the other as the joint-stock land bank system. The Federal Farm Loan Board has general supervision over the entire farm loan system. The members of this board are five in number, including the Secretary of the Treasury, who is a member and chairman *ex officio*, and four members to be appointed by the President, with the advice and consent of the Senate. This board is authorized to appoint appraisers, examiners, and registrars who are public officials (sec. 3).

The United States is divided into 12 farm loan districts, each having a Federal land bank with a subscribed capital of not less than \$750,000 (secs. 4, 5). These banks are located in the following cities:

Springfield, Mass.; Baltimore, Md.; Columbia, S. C.; Louisville, Ky.; New Orleans, La.; St. Louis, Mo.; St. Paul, Minn.; Omaha, Nebr.; Wichita, Kans.; Houston, Tex.; Berkeley, Calif.; and Spokane, Wash. (See First Annual Report of the Federal Farm Loan Board, 65th Cong., 2d sess., H. Doc. No. 714, 1029.)

The capital stock of these banks was first offered for public subscription. Thereafter, the authorized capital not so taken was subscribed by the Secretary of the Treasury for the United

States (sec. 5). The amount of this governmental subscription was \$8,892,130.

The purpose of the provision compelling governmental subscription was to provide funds for the initiation of the new system (sec. 5). Provision is made for the retirement of the stock of the Government so that in due course the capital of the Federal land banks will all be privately owned. Already \$626,321 of the stock taken by the Secretary of the Treasury has been paid off and retired.

The management of each bank is intrusted to a board of nine directors, three of whom are selected by the Federal Farm Loan Board, and six of whom are selected by the national farm loan associations (sec. 4).

These associations are local associations of borrowers established in order to secure intimate touch for borrowers who are desirous of obtaining loans with the land banks. Ten or more persons desiring loans on farm land may join to form these associations. They do not conduct a banking business, and their operations are very simple. They admit members who desire to borrow. Their directors (five or more in number) and loan committees pass upon the value of the farm-land security and the character of the borrower. Every borrower must take stock in a farm-loan association to the amount of 5 per cent of his loan. This amount is, in turn, subscribed by the association to

the stock of the Federal land bank. Thus, through interlocking stockholding, the borrowers become in effect the proprietors of the lending institution. In addition, the farm-loan associations indorse all mortgages secured by them for land banks and are liable to the land banks on their indorsements; shareholders in every farm-loan association are individually responsible for all the debts of the association to the extent of double the amount of stock subscribed by each, which will in no case exceed 10 per cent of the amount of any individual loan (secs. 9 and 11).

Owners or prospective owners of farm lands may become members of these associations (sec. 7).

It is through these associations that steps are taken to obtain loans. They are fully set out in the act. (Appendix, Exhibit A.)

The act also prescribes for the mortgages securing such loans and for the purposes for which such loans can be made. These are such as directly promote agriculture. (Secs. 10-12.)

Federal land banks are authorized to issue their obligations, to be known as farm-loan bonds, to an amount equal to twenty times their capital (sec. 18). All issues of such bonds must be approved by the Farm Loan Board (sec. 14). It is from the sale of these bonds that the banks will be enabled to secure the funds to loan to farmers after their original capital has been expended for this purpose. If they succeed in marketing their bonds, as, for

example, with interest at 5 per cent (sec. 20), loans to farmers from the proceeds of the sale of the bonds can not be made at a higher rate than 6 per cent (sec. 12). As the success of the entire system thus depends upon the marketability of the farm-loan bonds, they are declared to be instrumentalities of the United States and as such are exempt from all species of Federal and State taxation (sec. 26).

These bonds are amply secured as set forth in the act. (Secs. 19, 21, 9, 11, 12.)

The farm-loan bonds of the Federal land banks are lawful investments for all fiduciary and trust funds and may be accepted as security for all public deposits. They may, furthermore, be purchased by banks of the Federal reserve system (sec. 27).

The universal experience of foreign countries has demonstrated that profit-seeking organizations engaged in the farm-mortgage business have firmly established themselves even where cooperative associations are strongest and most prosperous. These companies have developed and prospered side by side and in competition with the cooperative societies. It is manifest, therefore, that they render useful service to agriculture in those countries. Accordingly, the act authorized the formation of such organizations, known as joint-stock land banks, whose capital is derived wholly from private subscription. They must begin business with

a minimum paid-up capital of \$250,000. Their operations are confined to the territory of a single State or a State contiguous to one in which its principal office is located. They can not engage in any business other than making farm-mortgage loans and issuing bonds. The same limitations as to the rate of interest which may be charged by Federal land banks apply as well to the joint-stock land banks. The latter class of banks, however, may loan to persons who are neither owners nor prospective owners of farm lands (but loans must be secured by mortgages on farm lands), and there are no restrictions as to the purposes for which the proceeds of the loans may be used by the borrowers. Furthermore, there is no maximum nor minimum amount prescribed for their loans to any one borrower and they can thus provide for the larger amounts of credit needed by those farming on a large scale. They are authorized to issue their bonds to the amount of fifteen times their capital and surplus; and their stock carries a double liability similar to the stock of national farm-loan associations (sec. 16).

The Farm Loan Board undertook to limit the amount of joint-stock loans to individuals under the power conferred upon it by the act to approve the bonds issued by joint-stock banks. The board has refused to approve bonds based on loans in excess of \$50,000 to one individual or borrower. (Farm loan act, sec. 17, Regulations of Farm Loan Board, dated July, 1919, p. 12.)

Every bond issued by joint-stock land banks is secured as follows:

(1) By the capital, reserves, and earnings of the land bank which issues it.

(2) By the double liability of the stockholders (sec. 16).

(3) By the collective security of all the mortgages pledged and segregated with the farm-loan registrar, which must at least equal in amount the outstanding bonds unless replaced by United States bonds or cash (sec. 19).

Farm-loan bonds of the joint-stock land banks are also exempt from all Federal and State taxation.

The following exemptions from all Federal, State, and municipal and local taxation are contained in the act (sec. 26):

(1) The capital, reserve, and surplus and income derived therefrom of Federal land banks and national farm-loan associations except taxes on real estate held by said banks or associations.

(2) First mortgages executed to either Federal land banks or joint-stock land banks and farm loan bonds issued by either class of such banks under the provisions of the act.

As one of the purposes of the act was to provide a low and equalized rate of interest to farmers, these exemptions were necessary, for if the mortgages held by the banks and farm loan bonds issued by them were subject to taxation

it would be necessary to pay a greater rate of interest to the bondholders which in turn would raise the interest rate to the farmers.

It is clear that the act is designed:

First. To furnish a market for United States bonds and to create Government depositaries and financial agents for the United States. To this end the act provides that both classes of banks when designated for that purpose by the Secretary of the Treasury shall be depositaries of public money, and they may be also employed as financial agents of the Government, performing all such duties both as depositaries and financial agents as may be required of them (sec. 6). Furthermore, both classes of banks are authorized to buy and sell United States bonds and to use them as collateral security for their own bonds in lieu of mortgages (sec. 19) and mortgage amortization payments may also be invested in United States bonds (sec. 22).

Second. To extend the financial system of the United States to agricultural credits and to promote the general welfare by promoting agriculture. The system of associations and farm loans are machinery to accomplish this purpose.

By the amendment of 1918, the Secretary of the Treasury was authorized to make deposits for the temporary use of any Federal land bank, not in excess of \$6,000,000 at any one time. The Secretary of the Treasury was also authorized

upon the request of the Federal Farm Loan Board during the fiscal years ending June 30, 1918 and 1919, respectively, to purchase from any Federal land bank, farm loan bonds issued by any such bank not in excess of \$100,000,000 in either of such years.

ARGUMENT.

I.

Congress had power to create the Federal land banks and the joint-stock land banks.

(A) The Federal land banks and the joint-stock land banks were constitutionally created as fiscal agents of the Government.

The purpose of the Federal farm loan act as disclosed in its title is twofold:

I. (a) To furnish a market for United States bonds, and

(b) To create Government depositaries and financial agents for the United States.

II. (c) To provide capital for agricultural development,

(d) To create a standard form of investment based on farm mortgages, and

(e) To equalize rates of interest on farm loans.

In carrying out the first purposes (a) and (b) the banks act as depositaries and agents of the United States and in a public or quasi-public capacity. In carrying out the second purposes (c), (d), and (e), it is believed that the capacity

in which they act is also public, and this will be demonstrated later. However, for the purpose of considering the functions of these banks as fiscal agents of the Government it will be assumed that their functions with regard to rural credits may be partially of a private character. The first question for determination, then, is whether it is within the power of Congress to create corporations which, besides being agencies of the Government, are invested with purely private functions.

Congress has no express power, under the Constitution, to create a corporation. It has, however, the power "to make all laws which shall be necessary and proper for carrying into execution" its express or implied powers. (Art. I, sec. 8, subdivision 18.) Among its express powers are those to collect taxes (Art. I, sec. 8, sub. 2), to borrow moneys (Art. I, sec. 8, sub. 2), and, by necessary implication, to care for and administer funds acquired through the exercise of these powers or required to exercise these powers. Congress, therefore, may establish corporations as a necessary and proper means of facilitating the credit of the General Government and of caring for, disposing of, and administering public funds. Furthermore, the means need not be necessary in the sense of being indispensable; it is sufficient if they are appropriate, and whether or not they are appropriate is properly a legislative question. These principles

have been settled since the decision of *McCulloch v. Maryland*, 4 Wheaton 316, and are not open to question. It was urged by counsel for the State of Maryland that the United States had no power to charter a bank or any other corporation. This court held otherwise, Marshall, C. J., saying (p. 411):

The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is therefore perceived why it may not pass as incidental to those powers which are expressly given if it be a direct mode of executing them.

The court said again (p. 422):

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the Government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of the government. That it is a convenient, a useful and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy.

Having the undisputed power thus to create corporations as depositories and financial agents of the Government, it is also settled that Congress may, as incidental to their creation, clothe them

with private banking powers. The first and second banks of the United States were such corporations. (See acts of Feb. 25, 1791, and Apr. 10, 1816.) In addition to acting as fiscal agents for the Government they were authorized to conduct a general private banking business. While the validity of the first bank was never challenged in the courts, that of its successor was twice passed on by this court and twice upheld. (*M'Culloch v. Maryland*, *supra*, and *Osborn v. Bank of the United States*, 9 Wheaton, 738.) In the latter case the private powers of the bank were especially scrutinized, and were held constitutional as being essential to the proper performance of its public functions. The court was urged to reconsider its decision in the *Maryland* case. It reexamined the whole subject with care, adhered to its doctrines therein announced, and held the Ohio act also unconstitutional. In answer to the contention that the bank, when performing private functions, could not be considered a Government agency exempt from State taxation, Chief Justice Marshall said (p. 860):

It (the bank) is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is undoubtedly capable of transacting private as well as public business. While it is the great instrument by which the fiscal

operations of the Government are effected, it is also trading with individuals for its own advantage.

Referring further to its private functions, the Chief Justice said (p. 864):

Congress was of opinion that these faculties were necessary to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the National Legislature. But, were it now to undergo revision, who would have the hardihood to say that without the employment of a banking capital, those services could be performed? That the exercise of these faculties greatly facilitates the fiscal operations of the Government is too obvious for controversy; and who will venture to affirm that the suppression of them would not materially affect those operations, and essentially impair, if not totally destroy, the utility of the machine to the Government?

And again (p. 865):

The court has already stated its conviction that without this capacity to trade with individuals the bank would be a very defective instrument, when considered with a single view to its fitness for the purposes of Government.

It is clear, therefore, that a banking corporation created by Congress may be vested, in addition to its powers to perform public functions, with powers

of a private nature, which may be used for its own advantage.

A more striking illustration is afforded by the national banks. They are supported entirely by private capital and are endowed with "all such incidental powers as shall be necessary to carry on the business of banking" (see Revised Statutes, sec. 5136), powers similar to those possessed by State banks. (See act of June 3, 1864.) On the other hand, when so designated by the Secretary of the Treasury, but only when so designated, they shall be depositories of public funds, and they may also be employed as financial agents of the Government. (Revised Statutes, 5153, as amended.) But notwithstanding the grant of private banking powers and the fact that the national banks generally perform only private functions, the constitutionality of the act creating them has been frequently affirmed, and is no longer open to question.

The leading case affirming this constitutionality is *Farmer's National Bank v. Dearing*, 91 U. S., 29. This was an action of debt by a national bank in the State of New York. The defendants pleaded usury, which by the New York statute forfeited the entire debt. The national bank act provided that the penalty for usury as respects these banks should be merely a forfeiture of the interest. The court held that the New York usuary law could not be applied to the national

banks, since it was inconsistent with the provisions of the national bank act.

The court said (p. 33):

The national banks organized under the act are instruments designed to aid the Government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them Congress is the sole judge. Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation except in so far as Congress may see proper to permit.

See also *Easton v. Iowa*, 188 U. S., 220, in which the court said (p. 238):

Our conclusions upon principle and authority are that Congress having power to create a system of national banks is the judge as to the extent of the powers which should be conferred upon such banks and has the sole power to regulate and control the exercise of their operations;

These conclusions have been recently reaffirmed in equally conclusive language in the case of *First National Bank v. Union Trust Company*, 244 U. S. 416.

In 1913 Congress passed the Federal reserve act, giving national banks power to act as trustee, executor, administrator, or registrar of stocks and

bonds. (Act of Dec. 23, 1913, sec. 11-K.) The validity of this section was attacked in *First National Bank v. Union Trust Company*, supra. This was an action of quo warranto, brought in a State court against the defendant national bank, seeking to have section 11-K of the Federal reserve act declared unconstitutional, counsel urging that a national bank had no power to exercise such functions. The Supreme Court of Michigan decided that section 11-K was unconstitutional. This decision was, however, reversed by this court on the authority of *M'Culloch v. Maryland* and *Osborn v. Bank*, supra, the Chief Justice declaring it to be erroneous (p. 424).

Because while in the premise to the reasoning the right of Congress was fully recognized to exercise its legislative judgment as to the necessity for creating the bank, including the scope and character of the public and private powers which should be given to it, in application the discretion of Congress was disregarded or set aside by exercising judicial discretion for the purpose of determining whether it was relevant or appropriate to give the bank the particular functions in question.

Referring to the *McCulloch* and *Osborn* cases, the court said (p. 425):

What those cases established was that although a business was of a private nature and subject to State regulation, if it was

of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in cooperation with or as part of its public authority.

This case, therefore, lays down the principle that Congress has power to confer upon a national bank functions of a wholly private nature; moreover, the judgment of Congress, and not that of the courts, is decisive in considering whether the exercise of such functions is incidental to the successful discharge by the bank of its public functions. It should be borne in mind that all these agencies would be a heavy charge on the Government if not permitted to engage in private business along with their public functions.

It may perhaps be doubted whether Congress could lawfully charter a corporation, designate it as a fiscal agent of the Government, and authorize it to carry on a business wholly unrelated to the performance of its duties as such fiscal agent. But in the present inquiry it is unnecessary to determine the limits, if any, of the discretion of Congress in such a case. The private functions conferred upon the Federal and joint-stock land banks by the Federal farm loan act can not be considered to be so unrelated to their public functions as to make their creation an abuse of

discretion on the part of Congress. If commercial banking powers are appropriate to the performance of the duties of a financial agency it is no less true that agricultural banking powers are equally appropriate. Furthermore, it is difficult to see why an agricultural credit institution is not as well equipped to handle Government funds as a commercial credit institution, or perhaps even better, as its business is less hazardous. At any rate, it is clear that the case is not one in which the courts would be warranted in substituting their own judgment for that of Congress.

The Federal reserve act, as amended by the act of September 7, 1916, gives to national banks the power (not theretofore possessed by them) to loan on farm lands and other real estate security. The validity of this provision has not been challenged, nor could it well be in the face of the decision in *First National Bank v. Union Trust Company*, *supra*.

Section 6 of the Federal farm loan act provides that all Federal land banks and joint-stock land banks, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs; that they may also be employed as financial agents of the Government; and that they shall perform all such reasonable duties as depositaries of public money and financial agents of the Government as may be required of them. These are indisputably

public functions. It is also to be noted that the language of this section is substantially similar to that of Revised Statutes, section 5153, *supra*, which authorizes national banks to act as depositaries and financial agents of the Government. Indeed, it is clear that the whole Federal farm loan system closely follows in its provisions and operations the national banking system. Both the national banks and the land banks are vested with public functions; that is, both are authorized to act as depositaries and financial agents of the Government. In addition, the national banks are empowered to do a general banking business, including the lending of money on real estate security and the administering of trust funds, while the land banks are empowered to do a limited banking business only. The only distinction is in the scope of the private functions. The national banks, viewed in their private aspect, are commercial credit institutions; the land banks are agricultural credit institutions with more limited banking powers than the national banks.

The fact that the Government is forbidden to subscribe to the capital stock of the joint-stock land banks becomes immaterial when it is remembered that there is no provision for Government subscription to the stock of the national banks. Indeed, while the Government is permitted to subscribe and has already subscribed very largely to the stock of the Federal land banks, this transaction is merely

for the purpose of initiating the operation of the system and will eventually, under the provisions of the act, be repaid and these banks supported entirely by private capital.

If but few of the Federal land banks and none of the joint-stock land banks have been designated as depositaries or financial agents of the Government it is owing to their recent organization and entirely immaterial. It is equally true that there are numerous national banks which have never been so designated, yet there is no doubt of the validity of their creation. It is the existence of the power to designate, not its exercise, which is controlling.

The banks also perform important functions in creating a market for United States bonds. On September 30, 1919, the Federal land banks were the owners of United States bonds of a par amount of \$4,230,805, and the joint-stock land banks were the owners on August 31, 1919, of United States bonds of a par amount of \$3,287,503. (Bill of Complaint, p. 9.)

This Federal land bank system does in fact constitute and was intended to constitute an important addition to the fiscal agencies of the Government. This, of itself, is sufficient to uphold the validity of the act, even though the other provisions of the system may have been for different purposes. The question whether the fiscal purpose of the act is primary or secondary is not one for judicial determination. The act constituting the

exercise of a lawful power, the motives which led Congress to exercise that power will not be inquired into by the courts.

This is shown by the case of *McCray v. United States*, 195 U. S. 27, a prosecution for the violation of certain revenue acts. The appellant claimed that the real purpose of the act was not to obtain revenue, but to prohibit the sale of oleo-margarine, which he claimed was not within the power of Congress. The court, however, held that the revenue provisions were sufficient to uphold the act, and said (p. 56):

The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted.

In *Doyle v. Continental Insurance Co.*, 94 U. S. 535, a case which upholds a State statute providing for the revocation of a license of a foreign corporation which should remove any suit brought against it to the Federal court, although it would be unconstitutional to directly prohibit such removal, the court said (p. 541):

If the State has the power to do an act, its intention or the reason by which it is influenced in doing it can not be inquired into.

In *Red C. Oil Co. v. N. C.*, 222 U. S. 380, a State inspection law which provided for a small

charge was attacked on the ground that the real purpose was revenue, not inspection. The court, in dismissing this contention, said (p. 392):

We can not lightly attribute improper motives to the law-making power.

Florida Central R. R. Co. v. Reynolds, 183 U. S. 471, sustains a State "delinquent tax" on railroads. The court said (p. 480):

We must assume that the legislature acts according to its judgment for the best interests of the State. A wrong intent can not be imputed to it.

Ellis v. United States, 206 U. S. 246, was a prosecution for violation of a Federal law limiting the hours of labor on public works. The constitutionality of the law was attacked, but was sustained by the court, Justice Holmes, speaking for the court, saying (p. 256):

It is true that it (i. e., Congress) has not the general power of legislation possessed by the legislatures of the States, and it may be true that the object of this law is of a kind not subject to its general control. But the power that it has over the mode in which contracts with the United States shall be performed can not be limited by a speculation as to motives.

These quotations are not stated with any idea that the other, and possibly more important, purpose of Congress in enacting the Federal farm-loan act was improper. Indeed, as will presently be in-

sisted, the act would be constitutional if the Federal land banks were not made fiscal agents of the Government and were designated solely to facilitate rural credits.

(B) The act is a constitutional exercise of the appropriation power of Congress.

The Federal farm-loan act is not a police measure, nor is it regulative or administrative in character. It imposes no restraints upon the rights of the people or of the States. It in no way interferes with the jurisdiction of the States. It creates no crimes or offenses except with respect to its own machinery and operation. What the act purports to accomplish, in addition to the purposes just presented, is to facilitate the borrowing of money on farm-land mortgages, and to this end it has set up a system of banks which offer certain privileges to the people. These privileges may be availed of or not as the people see fit. It may be well said of this act what was said by Alexander Hamilton of the act creating the first bank of the United States:

It has been usual, as an auxiliary test of constitutional authority, to try whether it abridges any preexisting right of any State or any individual. The proposed measure will stand the most severe examination on this point. Each State may still erect as many banks as it pleases. Every individual may still carry on the banking business to any extent he pleases.

The act, therefore, is not to be classified with remedial legislation, such as the act to regulate commerce or the food and drugs act, but rather with such statutes as those which created the Department of Agriculture, the Bureau of Education, the Smithsonian Institution, the Bureau of War Risk Insurance, and the vocational rehabilitation fund. Statutes of the latter class, which are not in any sense remedial or police measures, can be challenged if at all only on the ground that they involve an illegal appropriation and expenditure of public funds. It is from this standpoint alone that a citizen can claim sufficient interest to justify a constitutional contest. //

(1) Congress may appropriate public funds for the general welfare of the United States.

Article 1, section 8, sub 1, of the Constitution authorizes Congress:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.

The only limitations on the power thus granted are those as to uniformity and apportionment and the inhibition as to the taxation of exports. Subject only to these limitations, the taxing power of Congress is plenary, and is not in any way limited to those subjects which Congress may regulate or administer. (*McCray v. U. S.*, 195 U. S. 27; *Veazie v. Fenno*, 8 Wall. 533.)

There is, of course, the requirement that the purpose of the taxation be for the "common defense" or "general welfare." (*U. S. v. Gettysburg Elec. Ry. Co.*, 160 U. S. 681.)

Coextensive with the power of tax and derived from the same clause of the Constitution is the power to expend or appropriate public funds. Here again Congress is not limited to those subjects mentioned in its enumerated powers. (Willoughby on the Constitution, sec. 269.) Indeed, the only limitation is that an appropriation must relate to the common defense or to the general welfare. As said by President Monroe:

My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power restricted only by the duty to appropriate it to purposes of common defense and to general, not local, national, not State, benefit. (Views of the President of the United States on the subject of internal improvements, May 4, 1822.)

To the same effect is the following extract from Alexander Hamilton's Report on Manufactures (Dec. 5, 1791):

The power to raise money is plenary and indefinite, and the objects to which it may be appropriated are no less comprehensive than the payment of the public debts and the providing for the common defense and general welfare.

The phrase "general welfare" is one of the broadest scope and signification. In the opinion

of President Monroe no more comprehensive words could have been used. (Paper of President Monroe, *supra*.)

And according to Mr. Hamilton:

The only qualification of the generality of the phrase in question which seems to be admissible is this: That the object for which an appropriation of money is to be made be general and not local; its operation extending in fact or by possibility throughout the Union and not being confined to a particular spot.

(2) Assistance to agriculture pertains to the general welfare.

The earliest authority on this subject, and a most persuasive one because of his activity in connection with the framing and adoption of the Constitution, is Alexander Hamilton, who on December 5, 1791, wrote:

It is, therefore, of necessity, left to the discretion of the National Legislature to pronounce upon the objects to concern the general welfare and for which, under that description, an appropriation of money is requisite and proper. There seems to be no room for a doubt that whatever concerns the general interest of learning, of *agriculture*, of manufactures, and of commerce, are within the sphere of the national councils, as far as regards an application of money. (Report on Manufactures.)

The views of Mr. Hamilton have uniformly been sustained by the courts in a number of decisions

involving the question whether the exercise of the taxing, eminent domain, or appropriation powers of a State are for a public purpose. These decisions are in point because obviously legislation which has a public purpose must be for the general welfare, and vice versa.

O'Neil v. Leamer, 239 U. S. 244. (Drainage.)

Fall Brook Irrigation District v. Bradley, 164 U. S. 112. (Irrigation.)

Clark v. Nash, 198 U. S. 261. (Rights of way for irrigation.)

Mitchel v. Burlington, 4 Wallace 270, and *Larned v. Burlington*, 4 Wallace 275. (Roads and bridges.)

Burlington v. Beasley, 94 U. S. 310. (Construction of public gristmill.)

Spaulding v. Lowell, 23 Pick (Mass.) 71. (Public market.)

North Dakota v. Nelson County, 1 N. Dak. 88. (Seed grain barns.)

State v. Robinson, 35 Nebr. 401. (County fairs.)

Daggett v. Goldran, 92 California 53. (Agricultural exhibitions.)

It is not believed that the contention will seriously be advanced that a general system for aid to farmers, in order to promote agriculture, is not a public purpose. In this connection it should be noted that pursuant to the authority contained in the amendment of 1918 the Secretary of the Treasury has purchased farm-loan bonds issued by Federal land banks of a par amount of \$149,-

775,000, of which a par amount of \$136,885,000 was still held in the Treasury of the United States on July 1, 1919. This is in effect a direct appropriation through the subscription to the obligations of these banks.

It must be remembered that the discretion of the legislature as to what constitutes a public use or what pertains to the general welfare is controlling on the courts unless purely arbitrary in character and without even reasonable foundation. The rule is thus stated in *Cooley on Taxation* (3d ed., pp. 188, 189):

It is otherwise with the Federal Union also; for though its powers are not general like those of the State, but are limited and defined by the Federal Constitution, yet as they concern the most important matters of government and relate to subjects not of domestic concern merely, but of international intercourse, and to other matters which sometimes require broad and comprehensive views, and make a policy of liberal expenditures wise and statesmanlike, it would be neither reasonable nor prudent to subject its action in the matter of taxation to critical rules. That which it decides to be an object of public expenditure must generally be so accepted, and error in its action must be corrected by discussion and through public opinion and the elections.

Similarly, in *United States v. Gettysburg Electric Railway Company*, 160 U. S. 668, it is said (p. 680):

When the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation.

Under the principles thus laid down it need only be shown that Congress did not reach a purely arbitrary conclusion in determining, by the passage of the farm loan act, that the development of agriculture relates to the general welfare. For reasons already stated, such a proposition is self-evident. Furthermore, it can not be said that the determination of Congress was made hastily or without due deliberation. As the history of the act shows, the whole matter was before that body for more than two years before its final passage and all its phases were thoroughly discussed, both in hearings before various committees and on the floors of both Houses. Indeed, it may well be said of this act what Chief Justice Marshall said of the act incorporating the second United States bank, that it "did not steal upon an unsuspecting legislature and pass unobserved." (*McCulloch v. Maryland*, *supra*, p. 402.)

It need only be added that the act under consideration is national in scope and is not limited either as to operation or effect to any particular locality. It thus meets the constitutional test laid down by Alexander Hamilton, *supra*.—

That the object for which an appropriation of money is to be made be general, and

not local; its operation extending in fact or by possibility throughout the union and not being confined to a particular spot.

Again, it should be emphasized that while the object of an appropriation must be national, as distinguished from local, it may nevertheless embrace matters not included in the enumerated powers of Congress.

In addition to these decisions the argument of congressional precedent is of great importance in defending the constitutionality of the farm loan act. The courts have often recognized the force of this consideration. Thus, in *McCulloch v. Maryland*, supra, Chief Justice Marshall (p. 401) said:

It is conceived that a doubtful question, one on which human reason may pause and the human judgment be suspended, in the decision of which the great principles of liberty are not concerned, but the respective powers of those who are equally the representatives of the people, are to be adjusted; if not put at rest by the practice of the Government, ought to receive a considerable impression from that practice. An exposition of the Constitution, deliberately established by legislative acts on the faith of which an immense property has been advanced, ought not to be lightly disregarded.

The long-continued practice of the Federal Government has been to aid and encourage agricultural developments in a variety of ways. The most striking example is, of course, the act

of Congress creating the Department of Agriculture. (Act of May 15, 1862, and amendments: 1 Comp. Stat., secs. 788-852.)

Briefly summarized the act established a Department of Agriculture to acquire and diffuse useful information on agricultural subjects and to distribute high-grade varieties of vegetables, field and flower seeds, plants, shrubs, vines, bulbs, etc., to agriculturists, to preserve game birds, to establish a Weather Bureau, to establish a Bureau of Animal Industry for the protection of animals, and generally to assist agriculture throughout the country.

To support these activities large sums of money are annually appropriated by Congress. The validity of such appropriations has never been questioned and, of course, could not be successfully attacked because obviously in the interest of the general welfare.

During the summer and fall of 1913, the Secretary of the Treasury deposited in various national banks throughout the country sums aggregating \$34,661,000 to form the basis of loans for crop-moving purposes. Similar action has been taken in subsequent years. In 1914 Government deposits to the amount of \$12,659,000 were made in national banks through the South for the purpose of facilitating the credit of cotton growers. During the same year emergency currency aggregating \$75,678,120 was issued to these banks upon the security of commercial paper, which in turn was secured

by warehouse receipts of cotton, tobacco, etc. (See Annual Reports of Secretary of the Treasury, 1914, 1915, and 1916.) In 1918 the Government made loans aggregating upwards of \$4,500,000 through the Federal land banks of Wichita, Kans., St. Paul, Minn., and Spokane, Wash., to farmers in drought-stricken sections of the country. (Annual Report of Secretary of the Treasury, 1918.) The purpose of these actions was identical to the purpose of the Federal farm loan act, namely, to aid the agricultural interests of the country through a facilitation of credit.

Assuming as we logically may that the statutes and administrative acts just referred to are constitutional it follows that if the act under review had simply authorized direct loans of public funds to the farmers its validity would have been assured. Can it be said that the act is unconstitutional, because instead of directly dealing with the farmers it sets up a system of self-supporting banks to act as lenders instead of the National Treasury?

Once it be admitted that a provision for lending money to farmers on reasonable rates and terms can promote the general welfare it follows that the whole people could be taxed by Congress for this purpose and the money raised by taxation could be then appropriated directly in aid of the farmers. It is clear that the end is legitimate. Instead of adopting this means to accomplish the end Congress has seen fit, in order to relieve the

people of increased taxation, to provide a system to induce them voluntarily to provide the funds which they could be forced to provide through the taxing power. While there has been a direct appropriation in the subscription by the Government to the capital of the Federal land banks, it was contemplated that the major portion of the funds to be loaned to farmers should be raised through the issuance by both classes of banks of farm loan bonds, which are subscribed for by the people generally. The proposition then comes to this: That under the appropriation power Congress may create corporations which may obtain funds, through public subscription to their obligations, to be applied by these corporations for objects which pertain to the general welfare of the United States.

It is thus apparent that the creation of both classes of banks is *simply a means to raise money for a legitimate end*. As such their validity is established within the famous dictum of Chief Justice Marshall in *McCulloch v. Maryland*, supra (p. 421):

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

If Congress can directly raise money to be appropriated for the purpose contemplated by the farm loan act, it undoubtedly has the lesser power of

creating corporations to raise money for the same legitimate end.

That the stimulation of agriculture and a supply of products of the soil is essential to the general welfare, in maintaining armies, affecting commerce, providing cargoes for our merchant marine, and in a number of other general directions needs but the statement. This is in addition to the beneficent effect on the internal welfare of a large and increasing production, and apart from the benefit to individuals or classes.

(C) The act is a constitutional exercise of the power of Congress over the credit of the Nation.

The financial system of any country forms the basis of its general prosperity. Its strength and flexibility will directly effect the financial operations of the Government in its own fiscal affairs. There are two principal methods of doing business involved in the commercial dealings of every country. The first involves dealings upon a cash or currency basis; the second upon credit. It was apparent to the framers of the Constitution that the currency which passed from hand to hand must be uniform throughout the country in order to establish a sound basis for national trade and commerce. Indeed, according to Mr. Webster (Works, vol. 3, p. 395):

We all know that the establishment of a sound and uniform currency was one of the greatest ends contemplated in the adoption of the present Constitution. If we

could now fully explore all the motives of those who framed and those who supported that Constitution perhaps we should hardly find a more powerful one than this.

The same view was taken by this court in *Veazie Bank v. Fenno*, 8 Wallace, 533, where it was held that in the exercise of this power Congress had undertaken through its legislative acts to provide a currency for the entire country. In this case Congress had imposed a prohibitive tax of 10 per cent upon the notes issued by State banks, thus indicating an intention that the only currency of the country should be a national one. The court said (pp. 548-549):

Having thus, in the exercise of undisputed constitutional powers, undertaken to provide a currency for the whole country, it can not be questioned that Congress may, constitutionally, secure the benefit of it to the people by appropriate legislation. * * * Congress may restrain by suitable enactments the circulation as money of any notes not issued under its own authority. Without this power, indeed, its attempts to secure a sound and uniform currency for the country must be futile.

The same questions in a slightly different form were involved in the *Legal Tender Cases*, 12 Wallace, 457. Here the court held that Congress might authorize the issuance of Treasury notes and make them legal tender for the payment of all debts. It was strongly argued by counsel and

held in the dissenting opinion that while the power to supervise the currency system sustained the right of the Government to issue its own notes, it was not necessary for Congress to go further and provide that these notes must be received in satisfaction of the debts of its citizens. The prevailing opinion, however, took the broader view that Congress was the judge of the needs of the country in this particular. Mr. Justice Bradley concurred in a separate opinion. After pointing out that the Federal Government had (p. 555)—

jurisdiction over all those general subjects of legislation and sovereignty which affect the interests of the whole people equally and alike and which require uniformity of regulations and laws, such as the coinage, weights and measures, bankruptcies, the postal system, patent and copyright laws, the public lands, and interstate commerce, all which subjects are expressly or impliedly prohibited to the State governments,

he based his decision on the ground that Congress must necessarily have the power in times of stress to provide a currency to support the credit structure not only of the Government but of the people themselves. He said (pp. 562-564):

Another ground of the power to issue treasury notes or bills is the necessity of providing a proper currency for the country, and especially of providing for the failure or disappearance of the ordinary currency in times of financial pressure and *threatened collapse of commercial credit.*

Currency is a national necessity. The operations of the government, as well as private transactions, are wholly dependent on it. * * * Uniformity of money was one of the objects of the Constitution. * * * It is the duty of the general government to provide a national currency. The States can not do it except by the charter of local banks and that remedy, if strictly legitimate and constitutional, is inadequate, fluctuating, uncertain, and insecure, and operates with all the partiality to local interests which it was the very object of the Constitution to avoid. * * *

When the ordinary currency disappears, as it often does in time of war, when business begins to stagnate and general bankruptcy is imminent, then the government must have power at the same time to renovate its own resources and to revive the drooping energies of the nation by supplying it with a circulating medium. What that medium shall be, what its character and qualities, will depend upon the greatness of the exigency and the degree of promptitude which it demands. These are legislative questions. The heart of the nation must not be crushed out. *The people must be aided to pay their debts and meet their obligations.* The debtor interest of the country represents its bone and sinew, and *must be encouraged to pursue its avocations.* If relief were not afforded universal bankruptcy would ensue, and industry would be stopped, and government would be paralyzed in the paralysis of the people. * * *

This reasoning and the powers of the Government were affirmed and set at rest in *Legal Tender Cases*, 12 Wall. 457.

It is clear from the reasoning of this opinion that when in the judgment of Congress a great number of citizens are unable to satisfactorily carry on their business, owing to a lack of an available circulating medium, it is proper for Congress to step in and provide a system which will remedy the situation. This may be accomplished either through the issuance of Government notes to assist the cash transactions of the debtor or through the establishment by the Government of a series of banks to provide the necessary means of individual credit.

Congress has not hesitated to resort to the latter method. The first bank of the United States was established in 1791 and the second bank in 1816. Both banks, besides being fiscal agents of the United States, were vested with private banking powers. The national banks which were established by the act of June 3, 1864, *may* be designated financial agents and depositaries of the Government, but their chief functions are, of course, to facilitate commercial credit on a national scale and in a uniform manner. They are subject only to Federal supervision and are thus essentially national institutions.

In *Talbott v. Silver Bow County*, 139 U. S. 438, the court said (pp. 442, 443):

The national banking system was national in its design, coextensive in its operation

with the territorial limits of the United States, and intended to be the banking system for the whole country, Territories as well as States.

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These various provisions, scattered through the entire body of the statute respecting national banks, emphasize that which the character of the system implies—an intent to create a national banking system coextensive with the territorial limits of the United States, and with uniform operation within those limits, to establish everywhere throughout the United States banks with the security which a national examination gives, and furnish a currency of uniform value, the same in Arizona as in New York, in Territory as in State.

It was not the intention of Congress, by the establishment of national banks, to furnish the exclusive commercial institutions of the country. State institutions were allowed to exist in competition, but Congress provided a great system of national banks to which citizens might turn in obtaining their commercial credit. This was the first great step by the National Government in taking under its protection the credit needs of the whole country.

The second step was the passage of the Federal reserve act in 1916, which is entitled, "An act to provide for the establishment of the Federal reserve banks, to furnish an elastic currency, to afford means of rediscounting commercial paper,

to establish a more effective supervision of banking in the United States, and for other purposes (act of Dec. 23, 1913)." Without entering into an extended discussion of the purposes and accomplishments of this legislation, it may be said that it was intended to facilitate commercial credit and to secure the country against financial panics. The Federal Government through the Federal Reserve Board thus assumed a still more extensive control over the commercial credit of the country.

The needs of the agricultural interests were to some extent recognized in the Federal reserve act, but not provided for to the extent that such needs of other general interests were cared for. Until its passage the national banks were without power to lend upon land security, which left the agricultural interests wholly dependent on the State banks and other local institutions of credit, which experience showed were extremely unsatisfactory in many sections of the country. In order to promote the agriculture of the Nation by assisting the credit of farmers, the Federal reserve act permitted national banks to lend limited amounts on land security, for a period not exceeding five years. In addition, the notes of farmers when given in the course of their business were permitted to be discounted up to a maturity of six months. It was hoped that in this way agricultural credit would be greatly facilitated. Experience has since shown, however, that the chief need of the farmer is for long-term credits, and

that when commercial banks, which must keep their assets liquid, are given the option of lending their resources for short or for long periods they will, as a matter of sound business policy, refuse to tie up their funds except for short-time loans. The ordinary commercial needs are from 30 to 90 days, and, as a matter of sound economics, the banks prefer to cater to credit requirements of this duration. It was for this reason undoubtedly that Congress did not utilize national banks in setting up its system of farm-loan credits. A separate system of agricultural banks, without the right to loan money in the ordinary commercial transaction, was necessary if the credit needs of the farmer were to be served and cheaper money provided for agriculture. Therefore, Congress, by the passage of the farm-loan act, merely completed the exercise of its progressive and increasing control over the credit system of the country begun by the passage of the national-bank act and continued under the Federal reserve act. It was not favoring a class, but adapting its system to the differing conditions of each great industry so as to make the entire system as efficient as possible.

It seems clear that by the passage of these three great acts, and other legislation of uniform financial application, illustrated by the bankruptcy act, Congress has clearly indicated its intention to regulate and control a financial and monetary system and thus deal with the currency and credit

needs of all classes of citizens. To say that Congress may not assist the agricultural population which provides the essential means of the country's existence, to the same extent as it has assisted the commercial population, is, in the last analysis, to deny the right of the Government itself to exist, and at least to compel it to discriminate against the agricultural interests.

The same considerations which prompted Congress thus to take jurisdiction over the commercial credit of the Nation and reshape the currency policy led to the enactment of the Federal farm-loan act. Indeed that act was referred to through debates and in the committee reports as "a companion piece of legislation to the Federal reserve act" (see, for example, Congressional Record, p. 7708, 64th Cong., 1st sess.). It was realized that the subject of rural credits was fully as national in scope as that of commercial credits, and that only through Federal supervision could uniformity be obtained. The report of the United States commission deals at length with the question whether the matter was one of State or Federal jurisdiction, and concluded in favor of the latter, saying (S. Doc. 380, Pt. I, p. 32):

Our 48 State sovereignties represent a large number of differing methods of conveyancing, registration, foreclosure, taxation, and exemption. *The difficulty of securing uniformity of laws in these respects is obvious.* The efforts that have heretofore been made to secure the uniformity in

laws governing negotiable instruments, in divorce laws, and in other directions have shown that it is at best a slow process, and that, however wise the proposed legislation may be, it is extremely difficult to arouse the people to the necessity of prompt action.

(D) The act is a constitutional exercise of the war power of Congress.

The Constitution gives Congress the express power to declare war and by necessary implication the power to make war. Included in the power to make war is, of course, the power to prepare for war. This has been recognized not only by Congress but by the courts.

In the *Legal Tender* cases, 12 Wallace 457, the court said, speaking of the express powers granted to Congress under the Constitution (p. 546):

They have never been construed literally, and the Government could not exist if they were. Thus, the power to carry on war is conferred by the power to "declare war."

That the war power of Congress is not dormant in time of peace is indicated by Alexander Hamilton in his argument on the constitutionality of the Bank of the United States, in the course of which he said:

A nation is threatened with a war; large sums are wanted on a sudden to make the requisite preparations; taxes are laid for the purpose; but it requires time to obtain the benefit of them; anticipation is indispen-

sable. If there be a bank, the supply can at once be had; if there be none, loans from individuals must be sought. The progress of this is found too slow for the exigencies; in some situations they are not practicable at all.

In *Crandall v. Nevada*, 6 Wallace 35, the court held invalid a State tax on passengers for the privilege of passing through the State. It was recognized that this tax might conflict with the right of the Government to transport its troops in time of war.

The court said (p. 44):

The Federal power has a right to declare and prosecute wars, and, as a necessary incident, to raise and transport troops through and over the territory of any State of the Union.

If this right is dependent in any sense, however limited, upon the pleasure of a State, the Government itself may be overthrown by an obstruction to its exercise. Much the largest part of the transportation of troops during the late rebellion was by railroads, and largely through States whose people were hostile to the Union. If the tax levied by Nevada on railroad passengers had been the law of Tennessee, enlarged to meet the wishes of her people, the Treasury of the United States could not have paid the tax necessary to enable its armies to pass through her territory.

That the development of agriculture is a vital need in the country's preparedness for war can not

be questioned. The Government's guarantee of the price of wheat to farmers and its control of the railroads were instances of this practical necessity. The farm loan act was passed in 1916, when the war had been raging in Europe for two years and the food supply of the world had become much depleted. The entry of this Government into that conflict was imminent at the time, and this was undoubtedly in the mind of Congress. Even apart from the necessities created by a world conflict it is the duty of Congress to marshal the resources of the country in time of peace as a safeguard against the possibility of future wars. That these considerations played a prominent part in the passage of the act is evidence from the debates in Congress.

Senator Sheppard said (Cong. Rec., p. 4892, 64th Cong., 1st sess.):

I think that while we are engaged in the necessary preparation for an adequate Army and Navy we should not overlook the fact that the most permanent and important form of preparedness lies in a prosperous and independent agriculture.

Senator Hitchcock said, in the same session, page 6950:

How are we going to provide the food for our increasing millions? We can only do it by doing as Germany did. Beginning 45 years ago * * * Germany has increased the average German farm acre

more than 80 per cent. To bring this about it was necessary to supply farms with cheap and abundant capital; to build improvements, buy machinery, and fertilize the land. In this way intensive farming has enormously increased the national wealth and enabled the Empire to bear the burden of this war.

Representative Shallenberger, in the same session, page 1808, said:

We have heard a great deal of late about the necessity of preparedness, but here is a preparation that is more essential to our national existence and progress than battleships or cannon, whether in peace or war. The war strength of every nation is primarily dependent upon the productive capacity of its people. We have a concrete example of this displayed for our consideration upon the other side of the Atlantic. * * *

Understanding how all-important the ability of a nation to feed itself becomes in time of war, the German Government a generation ago began to study the problem of increasing the production of the farms of Germany. They, of course, learned that the essential requisite for agricultural development is a proper system of rural credit * * * As a result of a proper rural credit system the agricultural development of Germany began to draw the attention of the entire world. The wise men of Germany prepared well when they encouraged

the farmers of the Empire to fill her war chest with food.

Even before the war of 1914 the food situation in the United States was becoming increasingly unfavorable to such an extent that it was characterized in the hearings prior to the adoption of the farm-loan act as "a great national question." (Hearings of the subcommittee of the Senate, held Mar. 5, 1914, p. 504.) It can not be doubted therefore that one of the impelling motives for the passage of the act was the desire of Congress to prepare the country for a successful prosecution of war.

That any measure which even indirectly puts the Nation in a better position to meet or carry on war is within the war power of Congress was held in *United States v. Gettysburg Electric Railway Co.*, 160 U. S. 668. This case involved an act of Congress to condemn the Gettysburg battle field for the purpose of erecting monuments, marking the lines of the battle, etc., in pursuance of the congressional enactment. The defendant, an electric railroad, which had already condemned the land for its own purposes, resisted the Federal condemnation on the ground that it was not within the constitutional powers of Congress to condemn land for the mere purpose of marking a battle field. The court, however, held that such action was within the war powers of Congress by promoting patriotism, and said (p. 681):

Any act of Congress which plainly and directly tends to enhance the respect and love of the citizen for the institutions of his country and to quicken and strengthen his motive to defend them, and which is germane to and intimately connected with and appropriate to the exercise of some one or all of the powers granted by Congress must be valid.

And again (p. 682):

Such action on the part of Congress touches the heart, and comes home to the imagination of every citizen, and greatly tends to enhance his love and respect for those institutions for which these heroic sacrifices were made. The greater the love of the citizen for the institutions of his country, the greater is the dependence properly to be placed upon him for their defense in time of necessity, and it is to such men that the country must look for its safety.

And further (p. 683):

The power to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of those powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred.

If the promotion of patriotism comes within the war power, it seems very clear that assisting agriculture for the purpose of increasing the food sup-

ply is also valid under this power. How can one be a patriot without life? How can one maintain life without food?

A full stomach is quite as important for a soldier as patriotism. As was well said by Representative Shallenberger, Sixty-fourth Congress, first session, page 1808:

One of the sayings of Bonaparte so often quoted was that "every army moves upon its stomach." What he meant was that the bravest man can not fight unless he is fed.

It is submitted, therefore, that Congress, by virtue of its power to prepare for war, can properly stimulate food production, and that the creation of the land banks for the purposes enumerated in the act constitutes a means appropriate to that end.

The language of Mr. Justice Bradley in his concurring opinion in the *Legal Tender* cases, *supra*, is particularly applicable to the promotion of agriculture under the war power. He said (p. 563):

It is absolutely essential to independent national existence that government should have a firm hold on the two great sovereign instrumentalities of the *sword* and the *purse*, and the right to wield them without restriction on occasions of national peril. * * * Its armies must be filled, and its navies manned by the citizens in person. Its material of war, its munitions, equipment, and commissary stores must come from the industry of the country. This can only be stimulated into activity by a proper financial system, especially as regards the cur-

rency. * * * It must stimulate and set in motion the industry of the country.

II.

The exemption from State taxation of the bonds issued by and the mortgages executed to the Federal land banks and joint-stock land banks is constitutional.

The present suit attacks directly only the validity of the exemption from taxation of the bonds. The exemption of the mortgages will also be discussed, because they form the security underlying the bonds.

The Federal land act specifically exempts three classes of property of the land banks as follows:

(1) " Every Federal land bank and every farm-loan association including the capital and reserve or surplus therein and income derived therefrom."

(2) " Farm-loan bonds issued under the provisions of this act."

(3) " First mortgages executed to Federal land banks or joint-stock land banks."

It is further provided that the shares of the joint-stock land banks and the real property of Federal and joint-stock land banks and national farm loan associations may be taxed by the State subject to certain limitations. This whole scheme of tax exemptions is so similar to that of the national banks that authorities relating to the exemptions of national banks are directly in point.

The exemption of the farm loan associations and the joint-stock land banks, nor those relating

to the capital, reserve, or surplus and income of the Federal land banks, are not in issue. The discussion, therefore, is confined to (1) the exemption of mortgages executed and held by Federal land banks or joint-stock land banks; (2) exemption of farm loan bonds. Whether or not the exemption is a wise one is not a judicial question. The court can look only to the power of Congress to exempt its agencies from taxation. In *Bank v. Supervisors*, 7 Wall., 26, holding that a State could not tax the legal tender notes of the United States, the court said (pp. 30-31):

And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness as a means of carrying on the Government would be enhanced by exemption from taxation; and within the constitutional power of Congress, having resolved the question of usefulness affirmatively, to provide by law for such exemption.

It is to be noted that there is nothing unusual in the tax exemptions contained in the farm loan act. It has been the policy of the Government to exempt from taxation its own obligations and the functions and property of its fiscal agents in many instances, and it is simply a question for Congress to determine when in its opinion the usefulness of its agencies will be enhanced by the exemption from taxation. Some of the more important ex-

emptions contained in congressional legislation are as follows:

I. Federal reserve banks, including the capital stock and surplus therefrom and the income derived therefrom, except taxes on real estate. (38 Stat. 258.)

II. National banks are not subject to taxation except on their capital stock and their real estate.

III. The following provision is contained in R. S. 3701:

All stocks, bonds, Treasury notes, and other obligations of the United States shall be exempt from taxation by or under State or municipal or local authority.

IV. The exemptions granted to the various Liberty bond issues are matters of common knowledge.

When the exemption granted to farm loan bonds under this act is considered in relation to the purpose of Congress to secure low rates of interest to farmers, there can be no doubt as to the necessity or wisdom of such exemption.

There are two well-defined lines of decision, the first beginning with *McCulloch v. Maryland* and *Osborn v. The Bank*, both *supra*, holding that it is beyond the power of a State to levy a tax upon the functions of a governmental agency. The other line of decisions is illustrated by *Thomson v. Pacific Railroad*, 9 Wallace, 379, and *Railroad Company v. Peniston*, 18 Wallace, 5, holding that the property of a governmental agency as distinguished from its functions may

be taxed when not expressly or impliedly exempted by Congress. It is important to bear in mind this distinction, for a tax upon the farm loan bonds must be considered a tax upon the functions of the banks under *Farmers' Bank v. Minnesota*, 232 U. S. 516, and a tax upon the mortgages held by the banks may be considered a tax upon the property rather than upon the functions of the banks. In this brief they will be treated as property (the least favorable aspect), and it will be shown that even when so considered it is within the power of Congress to specifically exempt them.

(A) It is beyond the power of the States to levy a tax upon the functions, whether public or private, of a governmental agency.

The two great leading cases which related to the exemption from State taxation of the second United States bank are *McCulloch v. Maryland* and *Osborn v. The Bank*, both referred to *supra*.

In the former case, the court, speaking by Chief Justice Marshall, held that Congress had power to create a bank; the power to create implied the power to preserve, and as the State's power to tax was inconsistent with the preservation of the bank, its functions and operations must be free from such taxation. The court said (p. 431):

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in con-

ferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.

A dictum often quoted was then stated as follows (pp. 436-439) :

This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operations of the bank, and is, consequently, a tax on the operation of an instrument employed by the Government of the Union to carry its powers into execution. Such a tax must be unconstitutional.

The doctrine thus announced was reexamined and reaffirmed in *Osborn v. The Bank*, supra. It was argued that at least the private purposes of the bank should be subject to State taxation. But the court said (pp. 859-862) :

This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the Government in the trans-

action of its fiscal affairs, would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner. But the premises are not true.

* * * * *

It is not an instrument which the Government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for national purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the Government are effected, it is also trading with individuals for its own advantage. The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, etc. While they seem to admit the right to preserve this corporate existence, they deny the right to protect it in its trade and business.

* * * * *

Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute.

This distinction, then, has no real existence. To tax its faculties, its trade, and occupation, is to tax the bank itself. To

destroy or preserve the one, is to destroy or preserve the other.

These two cases, therefore, establish the proposition that the functions of a Federal agency, whether public or private, may not be taxed by the States, even the Congress is silent on the subject.

The National Bank cases, which now follow chronologically, are particularly important in that they deal with the effect of section 5219 of the Revised Statutes. In this section Congress expressly grants to the States the right to tax the capital stock and real property of national banks. The cases hold that Congress in making this express grant had impliedly withdrawn all other functions or property of national banks from the sphere of State taxation. It must be noted that the language of section 5219 with relation to national banks has been substantially inserted in the farm loan act, and in addition in the latter act the mortgages and the bonds have been expressly exempted. Accordingly, the National Bank cases which hold that functions or property of a national bank are exempt from State taxation by this implied prohibition of Congress will *a fortiori* apply to the land banks which have the benefit of both the implied exemption and the express exemption by Congress. The only public features of national banks consist in the fact that they may be designated Government depositaries

and financial agents. The land banks may also be designated Government depositaries and financial agents. Moreover, if the function promoting agriculture and increasing the supplies of the Nation of lending money to farmers is a public function and not a private function, their operations and property will be more forcibly exempted than those of the national banks.

The case of *Van Allen v. Assessors*, 3 Wallace, 573, is the first important case regarding the national-bank tax exemptions, and holds that Congress may, as it purported to do in the national-bank act, subject the shares of national banks held by private persons to State taxation. The court, however, did not in any way purport to overrule *McCulloch v. Maryland*, *supra*, and the cases following it, saying (p. 585):

It is said that Congress possesses no power to confer upon a State authority to be exercised which has been exclusively delegated to that body by the Constitution, and, consequently, that it can not confer upon a State the sovereign right of taxation; nor is a State competent to receive a grant of any such power from Congress. We agree to this. But as it respects a subject-matter over which Congress and the States may exercise a concurrent power, but from the exercise of which Congress, by reason of its paramount authority, may exclude the States, there is no doubt Congress may withhold the exercise of that authority and leave the States free to act.

There is no doubt, therefore, that the court would have held an exemption of the property constitutional if Congress had so enacted.

This case was followed by *National Bank v. Commonwealth*, 9 Wallace, 353, holding that the right to tax the shares of a national bank included the right to collect the tax from the bank itself as agent for its shareholders. The court said in discussing the principles of *McCulloch v. Maryland*, *supra* (p. 362):

The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is that the agencies of the Federal Government are only exempted from State legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that Government.

This case, therefore, leaves unimpaired the principle that a State may tax the functions of national agencies only in so far as Congress permits and in so far as such taxes will not seriously affect the performance of these functions.

These cases paved the way for the Railroad cases (discussed later) which hold that the property of a national agency may be taxed unless Congress has indicated a contrary intention. They do not affect the proposition that the functions of such an agency are exempt in any case from State taxa-

tion. It is not necessary to discuss whether or not Congress could allow the States to tax the functions of a governmental agency. It is sufficient that Congress has never attempted to permit such taxation, and therefore the question has never been squarely presented.

(B) A tax upon the farm-loan bonds would be a tax upon the functions of the land banks.

That a tax upon the farm-loan bonds issued by either class of banks would be a tax upon the functions of such banks, even when assessed against the holders of the bonds, is clearly held by *Farmers' Bank v. Minnesota*, 232 U. S. 516. In this case the State of Minnesota levied a tax upon the bonds issued by the municipalities of the Indian Territory and the Territory of Oklahoma. Such municipalities were held to be Government agencies. The tax was upon the bonds in the hands of the holders. The court held that such a tax was a tax upon the borrowing power of the municipality and therefore a tax upon its functions, which under *M'Culloch v. Maryland* was invalid. The court said (pp. 525, 526):

In our opinion, therefore, the municipalities of the Territory of Oklahoma and of Indian Territory were instrumentalities and agencies of the Federal Government, with whose operations the States were not permitted to interfere by taxation or otherwise, and the issuing of municipal bonds

was the performance of a governmental function, within the established doctrine.

* * * * *

But we deem it entirely clear that a tax upon the exercise of the function of issuing municipal bonds is a tax upon the operations of the Government and not in any sense a tax upon the property of the municipality. And to tax the bonds as property in the hands of the holders is, in the last analysis, to impose a tax upon the right of the municipality to issue them.

This reasoning applies with great force to the taxation of the bonds issued by the land banks. The issuance of such bonds is the exercise of the borrowing power of these banks, and therefore a tax upon them in the hands of the holders would be a clear tax upon this most important function of such banks.

(C) The property of a Federal agency is not subject to State taxation when expressly or impliedly exempted by Congress.

The early cases with regard to State taxation of the property of such agencies are *Thomson v. Pacific Railroad* and *Railroad Company v. Peniston*, *supra*.

The Thomson case was a stockholder's bill to enjoin the railroad from paying taxes on its *property* imposed by the State of Kansas, on the ground that the railroad was a Federal agency and, therefore, not subject to State taxation. The bill was dismissed, the court holding that the taxa-

tion was proper. The decision was based largely on the ground that the railroad had a State charter, but the court also said (p. 591) :

But we think there is a clear distinction between the means employed by the Government and the property of agents employed by the Government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means * * * but it will be safe to conclude, in general, in reference to persons and State corporations employed in Government service, that when Congress has not interposed to protect their property from State taxation such taxation is not obnoxious to that objection.

In the *Peniston* case the same principles were applied to a railroad which had a Federal charter. The court said (p. 33) :

It may, therefore, be considered as settled that no constitutional implications prohibit a State tax upon the property of an agent of the Government merely because it is the property of such an agent.

And again (p. 36) :

It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they

were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect.

However, in the concurring opinion by Justice Swayne, it is said (pp. 37-38):

I see no reason to doubt that it was the intention of Congress not to give the exemption claimed. The exercise of the power may be waived. But I hold that the road is a National instrumentality of such a character that Congress may interpose and protect it from State taxation whenever that body shall deem it proper to do so.

This case, therefore, did not hold that Congress may not exempt the property of Government agencies from State taxation, but merely that such exemption does not necessarily exist in the absence of congressional enactment.

These principles are followed in *Central Pacific Railroad v. California*, 162 U. S. 91, where the court said (p. 125):

It may be regarded as firmly settled that although corporations may be agents of the United States, their property is not the property of the United States, but the property of the agents, and that a State may tax the property of the agents, subject to the limitations pointed out in *Railroad Company v. Peniston*. * * *

Of course, if Congress should think it necessary for the protection of the United States to declare such property exempted, that would present a different question.

Congress did not see fit to do so here, and unless we are prepared to overrule a long line of well-considered decisions the case comes within the rule therein laid down.

The distinction between taxation of property and of functions is shown by the case of *California v. Pacific Railroad Company*, 127 U. S. 1, which was a suit brought by the State to collect a tax levied on the franchise of a railroad which had been incorporated as a Federal agency. This tax was held invalid on the ground that it was an attempt to tax the functions rather than the property of the railroad. The court said (p. 40) :

Assuming, then, that the Central Pacific Railroad Co. has received the important franchises referred to by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the company for national purposes and to subserve national ends. It seems very clear that the State of California can neither take them away nor destroy nor abridge them nor cripple them by onerous burdens. Can it tax them? It may undoubtedly tax outside visible property of the company situated within the State. That is a different thing. But may it tax franchises which are the grant of the United States? In our judgment it can not.

The result of the cases cited above is as follows :

1. The property of a Government agency is not exempt from State taxation in the absence of an express exemption by Congress.

2. The right of Congress to exempt such property is not squarely decided, but this latter question is answered satisfactorily by the later cases which hold that the property of a national bank is not subject to State taxation where Congress expressly or impliedly exempts it (construing Sec. 5219).

In *Farmer's Bank v. Dearing*, 91 U. S. 29, which has been already considered, the court makes the following analysis (p. 34):

In the complex system of polity, which obtains in this country, the powers of government may be divided into four classes—

Those which belong exclusively to the States;

Those which belong exclusively to the National Government;

Those which may be exercised concurrently and independently by both; and

Those which may be exercised by the States, but only with the consent, express or implied, of Congress.

The power of the States to tax the existing national bank lies within the category last mentioned.

It may be doubted whether this last statement is not too broad when applied to functions; that is, it is doubtful whether Congress has any power to allow the States to tax the functions of national banks. At any rate it has never previously done so, nor has it done so in the case of the land banks.

In *Owensboro National Bank v. Owensboro*, 173 U. S. 664, the court discussed the effect of section 5219 (the substance of which is contained in the act creating the land banks), expressly giving the States the right to tax the real property and shares of national banks. The State tax in question was called a "franchise" tax, but was held to be a tax upon the bank's intangible property. The court held that the effect of section 5219 was to exempt *all* property of the bank except the real property and its shares. Mr. Justice White said (p. 668):

It follows, then, necessarily from these conclusions that the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, *their property, assets, or franchises*, were it not for the permissive legislation of Congress.

And again, speaking of section 5219 (p. 669):

This section, then, of the Revised Statutes is the measure of the power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any State tax, therefore, which is in excess of and not in conformity to these requirements is void.

The court quotes with approval the following statement from *Davis v. Elmira Savings Bank*, 161 U. S. 283:

National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were created. These principles are axiomatic and are sanctioned by the repeated adjudications of this court.

And see:

Mercantile National Bank v. New York, 121 U. S. 138; and

People v. Weaver, 100 U. S. 539.

Bank of California v. Richardson, 248 U. S. 476, was a suit by a national bank to recover the amount of a tax levied on its stockholders, paid under protest. The tax was on the basis of the capitalization of plaintiff, a national bank, part of which was invested in the capital of another national bank. The court held: (1) That the valuation of the stock held in the other national

bank should have been deducted from the estimate of the valuation of the plaintiff bank in making assessments against its stockholders; (2) that the plaintiff as a national bank was not taxable at all as a stockholder in the State bank, though it was as a stockholder in the other national bank.

In a consideration of section 5219, already cited, the court said (p. 482):

The forms of expression used in the section make it certain that in adopting it the legislative mind had in view the subject of how far the banking associations created were or should be made subject to State taxation, which presumably it was deemed necessary to deal with in view of the controversies growing out of the creation of the Bank of the United States and dealt with by decisions of this court. (*McCulloch v. Maryland*, 4 Wheaton 316-436; *Osborn v. United States Bank*, 9 Wheaton 738, 867; *Weston v. Charleston*, 2 Peters 449.) There is also no doubt from the section that it was intended to comprehensively control the subject with which it dealt and thus to furnish the exclusive rule governing State taxation as to the Federal agencies created as provided in the section. All possibility of dispute to the contrary is foreclosed by the decisions of this court.

Justice Pitney, although dissenting on another ground, said (pp. 488-489):

Upon the last point I understand the case to be controlled by the decision of this court

in *Owensboro National Bank v. Owensboro*, 173 U. S. 664, where it was held that section 5219 had the effect of exempting not only the operations and franchises, but the property of the national banks from State taxation, except as to their real estate. There are weighty considerations to the contrary which seem not to have been called to the attention of the court in that case—certainly are not adverted to in the opinion—but it would serve no useful purpose to bring them into the present discussion. Therefore I take it to be settled that under section 5219 a national bank may not be taxed by a State with respect to its ownership of shares in another corporation except shares in another national bank.

Therefore, even considering a tax on the mortgages as a tax upon the property rather than the functions of the land banks, it is clearly within the power of Congress to exempt them from all taxation.

(D) The exemptions are valid under whatever power of Congress the establishment of the land banks may be sustained.

It has been argued that creation of the banks may be sustained under any of the following powers of Congress:

(a) The power to create fiscal agents of the Government.

(b) The appropriation power of Congress.

(c) The power over the financial and credit system of the country.

(d) The war power of Congress.

The validity of the exemption, as shown by the cases above cited, depends on the valid creation of the banks as Federal agencies. It is not necessary for them to be financial agents, although this is the form in which the question has been most frequently raised. The Pacific Railroad Co. has been held exempt as a Federal agency (*California v. Pacific Railroad Company*, supra), and likewise municipalities of a territory (*Farmers Bank v. Minnesota*, supra). Whether the banks are agencies to assist the Federal Government in its fiscal, agricultural, or war preparedness operations, they are appropriate means to carry out an express or implied power of Congress, and therefore in any case are proper Government agencies whose operations may be exempted from State or local taxation. It is sufficient if they were established in the language of the court in *California v. Pacific Railroad Company*, supra, "for national purposes and to subserve national ends."

TO SUMMARIZE.

In the light of these cases the validity of the exemption of the farm-loan bonds is clear. A State tax upon such bonds, under the doctrine of *Farmers Bank v. Minnesota*, supra, would have amounted to a tax upon a function (the borrowing power) of the banks, and would, therefore, have been invalid even if no express exemption by Con-

gress had been made. The express exemption in the farm-loan act is thus merely declaratory of existing law and hence not open to constitutional objection.

The validity of the exemption of the mortgages is equally clear. Under the doctrine of the national bank cases, *supra*, if Congress had confined itself in the Federal farm-loan act to the precise language employed in the Revised Statutes, section 5219, the property of the land banks would have been held exempted by implication from State taxation. In the act under consideration, however, Congress has gone further and expressly exempted the mortgages executed to land banks from all species of taxation. What Congress can accomplish by implication, it can of course, accomplish expressly, and accordingly there is no doubt as to the validity of this exemption.

CONCLUSION.

It is respectfully submitted that the Federal and joint-stock land banks were validly created by the Federal farm-loan act, that the exemption from taxation, as provided in the act, is valid, and that the act is in all respects constitutional and valid.

JANUARY, 1920.

ALEX. C. KING,
Solicitor General.

W. G. McADOO,
Special Assistant to the Attorney General.

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APPENDIX.

EXHIBIT A.

CHAP. 245.—An Act To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act shall be "The Federal Farm Loan Act." Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.

DEFINITIONS.

SEC. 2. That wherever the term "first mortgage" is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby. The term "farm loan bonds" shall be held to include all bonds secured by collateral deposited with a farm loan registrar under the terms of this Act; they shall be distinguished by the addition of the words "Federal," or "joint stock," as the case may be.

FEDERAL FARM LOAN BOARD.

SEC. 3. That there shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Loan Board.

Said Federal Farm Loan Board shall consist of five members, including the Secretary of the Treasury, who shall be a member and chairman ex officio, and four members to be

appointed by the President of the United States, by and with the advice and consent of the Senate. Of the four members to be appointed by the President, not more than two shall be appointed from one political party, and all four of said members shall be citizens of the United States and shall devote their entire time to the business of the Federal Farm Loan Board; they shall receive an annual salary of \$10,000 payable monthly, together with actual necessary traveling expenses.

One of the members to be appointed by the President shall be designated by him to serve for two years, one for four years, one for six years, and one for eight years, and thereafter each member so appointed shall serve for a term of eight years, unless sooner removed for cause by the President. One of the members shall be designated by the President as the Farm Loan Commissioner, who shall be the active executive officer of said board. Each member of the Federal Farm Loan Board shall within fifteen days after notice of his appointment take and subscribe to the oath of office.

The first meeting of the Federal Farm Loan Board shall be held in Washington as soon as may be after the passage of this Act, at a date and place to be fixed by the Secretary of the Treasury.

No member of the Federal Farm Loan Board shall, during his continuance in office, be an officer or director of any other institution, association, or partnership engaged in banking, or in the business of making land mortgage loans or selling land mortgages. Before entering upon his duties as a member of the Federal Farm Loan Board each member shall certify under oath to the President that he is eligible under this section.

The President shall have the power, by and with the advice and consent of the Senate, to fill any vacancy occurring in the membership of the Federal Farm Loan Board; if such vacancy shall be filled during the recess of the Senate a commission shall be granted which shall expire at the end of the next session.

The Federal Farm Loan Board shall appoint a farm loan registrar in each land bank district to receive applications for issues of farm loan bonds and to perform such other serv-

ices as are prescribed by this Act. It shall also appoint one or more land bank appraisers for each land bank district and as many land bank examiners as it shall deem necessary. Farm loan registrars, land bank appraisers, and land bank examiners appointed under this section shall be public officials and shall, during their continuance in office, have no connection with or interest in any other institution, association, or partnership engaged in banking or in the business of making land mortgage loans or selling land mortgages: *Provided*, That this limitation shall not apply to persons employed by the board temporarily to do special work.

The salaries and expenses of the Federal Farm Loan Board, and of farm loan registrars and examiners authorized under this section, shall be paid by the United States. Land bank appraisers shall receive such compensation as the Federal Farm Loan Board shall fix, and shall be paid by the Federal land banks and the joint stock land banks which they serve, in such proportion and in such manner as the Federal Farm Loan Board shall order.

The Federal Farm Loan Board shall be authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as it may deem necessary to conduct the business of said board. All salaries and fees authorized in this section and not otherwise provided for shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the Federal Farm Loan Board. All such attorneys, experts, assistants, clerks, laborers, and other employees, and all registrars, examiners, and appraisers shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

Every Federal land bank shall semiannually submit to the Federal Farm Loan Board a schedule showing the salaries or rates of compensation paid to its officers and employees.

The Federal Farm Loan Board shall annually make a full report of its operations to the Speaker of the House of Rep-

representatives, who shall cause the same to be printed for the information of the Congress.

The Federal Farm Loan Board shall from time to time require examinations and reports of condition of all land banks established under the provisions of this Act and shall publish consolidated statements of the results thereof. It shall cause to be made appraisals of farm lands as provided by this Act, and shall prepare and publish amortization tables which shall be used by national farm loan associations and land banks organized under this Act.

The Federal Farm Loan Board shall prescribe a form for the statement of condition of national farm loan associations and land banks under its supervision, which shall be filled out quarterly by each such association or bank and transmitted to said board.

It shall be the duty of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this Act and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers' organizations; to prepare and distribute in the same manner circulars setting forth the principles and advantages of amortized farm loans and the protection afforded debtors under this Act, instructing farmers how to organize and conduct farm loan associations, and advising investors of the merits and advantages of farm loan bonds; and to disseminate in its discretion information for the further instruction of farmers regarding the methods and principles of cooperative credit and organization. Said board is hereby authorized to use a reasonable portion of the organization fund provided in section thirty-three of this Act for the objects specified in this paragraph, and is instructed to lay before the Congress at each session its recommendations for further appropriations to carry out said objects.

FEDERAL LAND BANKS.

SEC. 4. That as soon as practicable the Federal Farm Loan Board shall divide the continental United States, excluding Alaska, into twelve districts, which shall be known as Federal land bank districts, and may be designated by

number. Said districts shall be apportioned with due regard to the farm loan needs of the country, but no such district shall contain a fractional part of any State. The boundaries thereof may be readjusted from time to time in the discretion of said board.

The Federal Farm Loan Board shall establish in each Federal land bank district a Federal land bank, with its principal office located in such city within the district as said board shall designate. Each Federal land bank shall include in its title the name of the city in which it is located. Subject to the approval of the Federal Farm Loan Board, any Federal land bank may establish branches within the land bank district.

Each Federal land bank shall be temporarily managed by five directors appointed by the Federal Farm Loan Board. Said directors shall be citizens of the United States and residents of the district. They shall each give a surety bond, the premium on which shall be paid from the funds of the bank. They shall receive such compensation as the Federal Farm Loan Board shall fix. They shall choose from their number, by majority vote, a president, a vice president, a secretary and a treasurer. They are further authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other employees as they may deem necessary, and to fix their compensation, subject to the approval of the Federal Farm Loan Board.

Said temporary directors shall, under their hands, forthwith make an organization certificate, which shall specifically state:

First. The name assumed by such bank.

Second. The district within which its operations are to be carried on, and the particular city in which its principal office is to be located.

Third. The amount of capital stock and the number of shares into which the same is to be divided: *Provided*, That every Federal land bank organized under this Act shall by its articles of association permit an increase of its capital stock from time to time for the purpose of providing for the issue of shares to national farm loan associations and stockholders who may secure loans through agents of Federal land banks in accordance with the provisions of this Act.

Fourth. The fact that the certificate is made to enable such persons to avail themselves of the advantages of this Act. The organization certificate shall be acknowledged before a judge or clerk of some court of record or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, transmitted to the Farm Loan Commissioner, who shall record and carefully preserve the same in his office, where it shall be at all times open to public inspection.

The Federal Farm Loan Board is authorized to direct such changes in or additions to any such organization certificate, not inconsistent with this Act, as it may deem necessary or expedient.

Upon duly making and filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third. To make contracts.

Fourth. To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, subject to the supervision and regulation of the Federal Farm Loan Board, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incident-

tal powers as shall be necessary to carry on the business herein described.

After the subscriptions to stock in any Federal land bank by national farm loan associations, hereinafter authorized, shall have reached the sum of \$100,000, the officers and directors of said land bank shall be chosen as herein provided and shall, upon becoming duly qualified, take over the management of said land bank from the temporary officers selected under this section.

The board of directors of every Federal land bank shall be selected as hereinafter specified and shall consist of nine members, each holding office for three years. Six of said directors shall be known as local directors, and shall be chosen by and be representative of national farm loan associations; and the remaining three directors shall be known as district directors, and shall be appointed by the Federal Farm Loan Board and represent the public interest.

At least two months before each election the Farm Loan Commissioner shall notify each national farm loan association in writing that such election is to be held, giving the number of directors to be elected for its district, and requesting each association to nominate one candidate for each director to be elected. Within ten days of the receipt of such notice each association shall forward its nominations to said Farm Loan Commissioner. Said commissioner shall prepare a list of candidates for local directors consisting of the twenty persons securing the highest number of votes from national farm loan associations making such nominations.

At least one month before said election said Farm Loan Commissioner shall mail to each national farm loan association the list of candidates. The directors of each national farm loan association shall cast the vote of said association for as many candidates on said list as there are vacancies to be filled, and shall forward said vote to the Farm Loan Commissioner within ten days after said list of candidates is received by them. The candidates receiving the highest number of votes shall be elected as local directors. In case of a tie the Farm Loan Commissioner shall determine the choice.

The Federal Farm Loan Board shall designate one of the district directors to serve for three years and to act as chairman of the board of directors. It shall designate one of said directors to serve for a term of two years and one to serve for a term of one year. After the first appointments each district director shall be appointed for a term of three years.

At the first regular meeting of the board of directors of each Federal land bank it shall be the duty of the local directors to designate two of the local directors whose term of office shall expire in one year from the date of such meeting, two whose term of office shall expire in two years from said date, and two whose term of office shall expire in three years from said date. Thereafter every local director of a Federal land bank chosen as hereinbefore provided shall hold office for a term of three years. Vacancies that may occur in the board of directors shall be filled for the unexpired term in the manner provided for the original selection of such directors.

Directors of Federal land banks shall have been for at least two years residents of the district for which they are appointed or elected, and at least one district director shall be experienced in practical farming and actually engaged at the time of his appointment in farming operations within the district. No director of a Federal land bank shall, during his continuance in office, act as an officer, director, or employee of any other institution, association, or partnership engaged in banking or in the business of making or selling land mortgage loans.

Directors of Federal land banks shall receive, in addition to any compensation otherwise provided, a reasonable allowance for necessary expenses in attending meetings of their respective boards, to be paid by the respective Federal land banks. Any compensation that may be provided by boards of directors of Federal land banks for directors, officers, or employees shall be subject to the approval of the Federal Farm Loan Board.

CAPITAL STOCK OF FEDERAL LAND BANKS.

SEC. 5. That every Federal land bank shall have, before beginning business, a subscribed capital of not less than

\$750,000. The Federal Farm Loan Board is authorized to prescribe the times and conditions of the payment of subscriptions to capital stock, to reject any subscription in its discretion, and to require subscribers to furnish adequate security for the payment thereof.

The capital stock of each Federal land bank shall be divided into shares of \$5 each, and may be subscribed for and held by any individual, firm, or corporation, or by the Government of any State or of the United States.

Stock held by national farm loan associations shall not be transferred or hypothecated, and the certificates therefor shall so state.

Stock owned by the Government of the United States in Federal land banks shall receive no dividends, but all other stock shall share in dividend distributions without preference. Each national farm loan association and the Government of the United States shall be entitled to one vote for each share of stock held by it in deciding all questions at meetings of shareholders, and no other shareholder shall be permitted to vote. Stock owned by the United States shall be voted by the Farm Loan Commissioner, as directed by the Federal Farm Loan Board.

It shall be the duty of the Federal Farm Loan Board, as soon as practicable after the passage of this Act, to open books of subscription for the capital stock of a Federal land bank in each Federal land bank district. If within thirty days after the opening of said books any part of the minimum capitalization of \$750,000 herein prescribed for Federal land banks shall remain unsubscribed, it shall be the duty of the Secretary of the Treasury to subscribe the balance thereof on behalf of the United States, said subscription to be subject to call in whole or in part by the board of directors of said land bank upon thirty days' notice with the approval of the Federal Farm Loan Board; and the Secretary of the Treasury is hereby authorized and directed to take out shares corresponding to the unsubscribed balance as called, and to pay for the same out of any moneys in the Treasury not otherwise appropriated. Thereafter no stock shall be issued except as hereinafter provided.

After the subscriptions to capital stock by national farm loan associations shall amount to \$750,000 in any Federal land bank, said bank shall apply semiannually to the payment and retirement of the shares of stock which were issued to represent the subscriptions to the original capital twenty-five per centum of all sums thereafter subscribed to capital stock until all such original capital stock is retired at par.

At least twenty-five per centum of that part of the capital of any Federal land bank for which stock is outstanding in the name of national farm loan associations shall be held in quick assets, and may consist of cash in the vaults of said land bank, or in deposits in member banks of the Federal reserve system, or in readily marketable securities which are approved under rules and regulations of the Federal Farm Loan Board: *Provided*, That not less than five per centum of such capital shall be invested in United States Government bonds.

GOVERNMENT DEPOSITARIES.

SEC. 6. That all Federal land banks and joint stock land banks organized under this Act, when designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, except receipts from customs, under such regulations as may be prescribed by said Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. And the Secretary of the Treasury shall require of the Federal land banks and joint stock land banks thus designated satisfactory security, by the deposit of United States bonds or otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government. No Government funds deposited under the provisions of this section shall be invested in mortgage loans or farm loan bonds.

NATIONAL FARM LOAN ASSOCIATIONS.

SEC. 7. That corporations, to be known as national farm loan associations, may be organized by persons desiring to borrow money on farm mortgage security under the terms of

this Act. Such persons shall enter into articles of association which shall specify in general terms the object for which the association is formed and the territory within which its operations are to be carried on, and which may contain any other provision, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. Said articles shall be signed by the persons uniting to form the association, and a copy thereof shall be forwarded to the Federal land bank for the district, to be filed and preserved in its office.

Every national farm loan association shall elect, in the manner prescribed for the election of directors of national banking associations, a board of not less than five directors, who shall hold office for the same period as directors of national banking associations. It shall be the duty of said board of directors to choose in such manner as they may prefer a secretary-treasurer, who shall receive such compensation as said board of directors shall determine. The board of directors shall elect a president, a vice president, and a loan committee of three members.

The directors and all officers except the secretary-treasurer shall serve without compensation, unless the payment of salaries to them shall be approved by the Federal Farm Loan Board. All officers and directors except the secretary-treasurer shall, during their terms of office, be bona fide residents of the territory within which the association is authorized to do business, and shall be shareholders of the association.

It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, to pay over to borrowers all sums received for their account from the Federal land bank upon first mortgage as in this Act prescribed, and to meet all other obligations of the association, subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer, acting under the direction of the national farm loan association, to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association. He shall be the

custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association. He shall furnish a suitable surety bond to be prescribed and approved by the Federal Farm Loan Board for the proper performance of the duties imposed upon him under this Act, which shall cover prompt collection and transmission of funds. He shall make a quarterly report to the Federal Farm Loan Board upon forms to be provided for that purpose. Upon request from said board said secretary-treasurer shall furnish information regarding the condition of the national farm loan association for which he is acting, and he shall carry out all duly authorized orders of said board. He shall assure himself from time to time that the loans made through the national farm loan association of which he is an officer are applied to the purposes set forth in the application of the borrower as approved, and shall forthwith report to the land bank of the district any failure of any borrower to comply with the terms of his application or mortgage. He shall also ascertain and report to said bank the amount of any delinquent taxes on land mortgaged to said bank and the name of the delinquent.

The reasonable expenses of the secretary-treasurer, the loan committee, and other officers and agents of national farm loan associations, and the salary of the secretary-treasurer, shall be paid from the general funds of the association, and the board of directors is authorized to set aside such sums as it shall deem requisite for that purpose and for other expenses of said association. When no such funds are available, the board of directors may levy an assessment on members in proportion to the amount of stock held by each, which may be repaid as soon as funds are available, or it may secure an advance from the Federal land bank of the district, to be repaid with interest at the rate of six per centum per annum, from dividends belonging to said association. Said Federal land bank is hereby authorized to make such advance and to deduct such repayment.

Ten or more natural persons who are the owners, or about to become the owners, of farm land qualified as security for a mortgage loan under section twelve of this Act, may unite to form a national farm loan association. They shall

organize subject to the requirements and the conditions specified in this section and in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors may consist of five members only, and instead of a secretary and a treasurer there shall be a secretary-treasurer, who need not be a shareholder of the association.

When the articles of association are forwarded to the Federal land bank of the district as provided in this section, they shall be accompanied by the written report of the loan committee as required in section ten of this Act, and by an affidavit stating that each of the subscribers is the owner, or is about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan; that the loan desired by each person is not more than \$10,000, nor less than \$100, and that the aggregate of the desired loans is not less than \$20,000; that said affidavit is accompanied by a subscription to stock in the Federal land bank equal to five per centum of the aggregate sum desired on mortgage loans; and that a temporary organization of said association has been formed by the election of a board of directors, a loan committee, and a secretary-treasurer who subscribes to said affidavit, giving his residence and post office address.

Upon receipt of such articles of association, with the accompanying affidavit and stock subscription, the directors of said Federal land bank shall send an appraiser to investigate the solvency and character of the applicants and the value of their lands, and shall then determine whether in their judgment a charter should be granted to such association. They shall forward such articles of association and the accompanying affidavit to the Federal Farm Loan Board with their recommendation. If said recommendation is unfavorable, the charter shall be refused.

If said recommendation is favorable, the Federal Farm Loan Board shall thereupon grant a charter to the applicants therefor, designating the territory in which such association may make loans, and shall forward said charter to said applicants through said Federal land bank: *Provided*, That said Federal Farm Loan Board may for good cause shown in any case refuse to grant a charter.

Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive from the Federal land bank of the district sums to be loaned to its members under the terms and conditions of this Act.

Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of five per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued. The capital stock of a Federal land bank shall not be reduced to an amount less than five per centum of the principal of the outstanding farm loan bonds issued by it.

CAPITAL STOCK OF NATIONAL FARM LOAN ASSOCIATIONS.

SEC. 8. That the shares in national farm loan associations shall be of the par value of \$5 each.

Every shareholder shall be entitled to one vote of each share of stock held by him at all elections of directors and in deciding all questions at meetings of shareholders: *Provided*, That the maximum number of votes which may be cast by any one shareholder shall be twenty.

No persons but borrowers on farm land mortgages shall be members or shareholders of national farm associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall prescribe for shares of stock in such farm loan association to an amount equal to five per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan.

If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each \$100 of the face of his loan, or any major fractional part thereof. Such capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding.

Every national farm loan association formed under this Act shall by its articles of association provide for an increase of its capital stock from time to time for the purpose of securing additional loans for its members and providing for the issue of shares to borrowers in accordance with the provisions of this Act. Such increases shall be included in the quarterly reports to the Federal Farm Loan Board.

NATIONAL FARM LOAN ASSOCIATIONS.—SPECIAL PROVISIONS.

SEC. 9. That any person whose application for membership is accepted by a national farm loan association shall be entitled to borrow money on farm land mortgage upon filing his application in accordance with section eight and otherwise complying with the terms of this Act whenever the Federal land bank of the district has funds available for that purpose, unless said land bank or the Federal Farm Loan Board shall, in its discretion, otherwise determine.

Any person desiring to secure a loan through a national farm loan association under the provisions of this Act may, at his option, borrow from the Federal land bank through such association the sum necessary to pay for shares of stock subscribed for by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments: *Provided, however,* That such addition to the loan shall not be permitted to increase said loan above the limitation imposed in subsection fifth of section twelve.

Subject to rules and regulations prescribed by the Federal Farm Loan Board, any national farm loan association shall be entitled to retain as a commission from each interest

payment on any loan indorsed by it an amount to be determined by said board not to exceed one-eighth of one per centum semiannually upon the unpaid principal of said loan, any amounts so retained as commissions to be deducted from dividends payable to such farm loan association by the Federal land bank, and to make application to the land bank of the district for loans not exceeding in the aggregate one-fourth of its total stock holdings in said land bank. The Federal land banks shall have power to make such loans to associations applying therefor and to charge interest at a rate not exceeding six per centum per annum.

Shareholders of every national farm loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

After a charter has been granted to a national farm loan association, any natural person who is the owner, or about to become the owner, of farm land qualified under section twelve of this Act as the basis of a mortgage loan, and who desires to borrow on a mortgage of such farm land, may become a member of the association by a two-thirds vote of the directors upon subscribing for one share of the capital stock of such association for each \$100 of the face of his proposed loan or any major fractional part thereof. He shall at the same time file with the secretary-treasurer his application for a mortgage loan, giving the particulars required by section twelve of this Act.

APPRAISAL.

SEC. 10. That whenever an application for a mortgage loan is made to a national farm loan association, it shall be first referred to the loan committee provided for in section seven of this Act. Said loan committee shall examine the land which is offered as security for the desired loan and shall make a detailed written report signed by all three members, giving the appraisal of said land as determined by them, and such other information as may be required by rules and regulations to be prescribed by the Federal Farm

Loan Board. No loan shall be approved by the director unless said loan committee agrees upon a favorable report.

The written report of said loan committee shall be submitted to the Federal land bank, together with the application for the loan, and the directors of said land bank shall examine said written report when they pass upon the loan application which it accompanies, but they shall not be bound by said appraisal.

Before any mortgage loan is made by any Federal land bank, or joint stock land bank, it shall refer the application and written report of the loan committee to one or more of the land bank appraisers appointed under the authority of section three of this Act, and such appraiser or appraisers shall investigate and make a written report upon the land offered as security for said loan. No such loan shall be made by said land bank unless said written report is favorable.

Forms for appraisal reports for farm loan associations and land banks shall be prescribed by the Federal Farm Loan Board.

Land bank appraisers shall make such examinations and appraisals and conduct such investigations, concerning farm loan bonds and first mortgages, as the Federal Farm Loan Board shall direct.

No borrower under this Act shall be eligible as an appraiser under this section, but borrowers may act as members of a loan committee in any case where they are not personally interested in the loan under consideration. When any member of a loan committee or of a board of directors is interested, directly or indirectly, in a loan, a majority of the board of directors of any national farm loan association shall appoint a substitute to act in his place in passing upon such loan.

POWERS OF NATIONAL FARM LOAN ASSOCIATIONS.

SEC. 11. That every national farm loan association shall have power:

First. To indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal land bank of its district.

Second. To receive from the Federal land bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under section twelve of this Act.

Third. To acquire and dispose of such property, real or personal, as may be necessary or convenient for the transaction of its business.

Fourth. To issue certificates against deposits of current funds bearing interest for not longer than one year at not to exceed four per centum per annum after six days from date, convertible into farm loan bonds when presented at the Federal land bank of the district in the amount of \$25 or any multiple thereof. Such deposits, when received, shall be forthwith transmitted to said land bank, and be invested by it in the purchase of farm loan bonds issued by a Federal land bank or in first mortgages as defined by this Act.

RESTRICTIONS ON LOANS BASED ON FIRST MORTGAGES.

SEC. 12. That no Federal land bank organized under this Act shall make loans except upon the following terms and conditions:

First. Said loans shall be secured by duly recorded first mortgages on farm land within the land bank district in which the bank is situated.

Second. Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover, first, a charge on the loan, at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding one per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; and, third, such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: *Provided*, That after five years from the date upon which a loan is made additional payments in sums of \$25 or any multiple thereof for the reduction of the principal, or the pay-

ment of the entire principal, may be made on any regular installment date under the rules and regulations of the Federal Farm Loan Board: *And provided further*, That before the first issue of farm loan bonds by any land bank the interest rate on mortgages may be determined in the discretion of said land bank subject to the provisions and limitations of this Act.

Third. No loan on mortgage shall be made under this Act at a rate of interest exceeding six per centum per annum, exclusive of amortization payments.

Fourth. Such loans may be made for the following purposes and for no other:

(a) To provide for the purchase of land for agricultural uses.

(b) To provide for the purchase of equipment, fertilizers and live stock necessary for the proper and reasonable operation of the mortgaged farm; the term "equipment" to be defined by the Federal Farm Loan Board.

(c) To provide buildings and for the improvement of farm lands; the term "improvement" to be defined by the Federal Farm Loan Board.

(d) To liquidate indebtedness of the owner of the land mortgaged, existing at the time of the organization of the first national farm loan association established in or for the county in which the land mortgaged is situated, or indebtedness subsequently incurred for purposes mentioned in this section.

Fifth. No such loan shall exceed fifty per centum of the value of the land mortgaged and twenty per centum of the value of the permanent, insured improvements thereon, said value to be ascertained by appraisal, as provided in section ten of this Act. In making said appraisal the value of the land for agricultural purposes shall be the basis of appraisal and the earning power of said land shall be a principal factor.

A reappraisal may be permitted at any time in the discretion of the Federal land bank, and such additional loan may be granted as such reappraisal will warrant under the provisions of this paragraph. Whenever the amount of the loan applied for exceeds the amount that may be loaned

under the appraisal as herein limited, such loan may be granted to the amount permitted under the terms of this paragraph without requiring a new application or appraisal.

Sixth. No such loan shall be made to any person who is not at the time, or shortly to become, engaged in the cultivation of the farm mortgaged. In case of the sale of the mortgaged land, the Federal land bank may permit said mortgage and the stock interests of the vendor to be assumed by the purchaser. In case of the death of the mortgagor, his heir or heirs, or his legal representative or representatives, shall have the option, within sixty days of such death, to assume the mortgage and stock interests of the deceased.

Seventh. The amount of loans to any one borrower shall in no case exceed a maximum of \$10,000, nor shall any loan be for a less sum than \$100.

Eighth. Every applicant for a loan under the terms of this Act shall make application on a form to be prescribed for that purpose by the Federal Farm Loan Board, and such applicant shall state the objects to which the proceeds of said loan are to be applied, and shall afford such other information as may be required.

Ninth. Every borrower shall pay simple interest on defaulted payments at the rate of eight per centum per annum, and by express covenant in his mortgage deed shall undertake to pay when due all taxes, liens, judgments, or assessments which may be lawfully assessed against the land mortgaged. Taxes, liens, judgments, or assessments not paid when due, and paid by the mortgagee, shall become a part of the mortgage debt and shall bear simple interest at the rate of eight per centum per annum. Every borrower shall undertake to keep insured to the satisfaction of the Federal Farm Loan Board all buildings the value of which was a factor in determining the amount of the loan. Insurance shall be made payable to the mortgagee as its interest may appear at time of loss, and, at the option of the mortgagor and subject to general regulations of the Federal Farm Loan Board, sums so received may be used to pay for reconstruction of the buildings destroyed.

Tenth. Every borrower who shall be granted a loan under the provisions of this Act shall enter into an agreement, in

form and under conditions to be prescribed by the Federal Farm Loan Board, that if the whole or any portion of his loan shall be expended for purposes other than those specified in his original application, or if the borrower shall be in default in respect to any condition or covenant of the mortgage, the whole of said loan shall, at the option of the mortgagee, become due and payable forthwith: *Provided*, That the borrower may use part of said loan to pay for his stock in the farm loan association, and the land bank holding such mortgage may permit said loan to be used for any purpose specified in subsection fourth of this section.

Eleventh. That no loan or the mortgage securing the same shall be impaired or invalidated by reason of the exercise of any power by any Federal land bank or national farm loan association in excess of the powers herein granted or any limitations thereon.

Funds transmitted to farm loan associations by Federal land banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower.

POWERS OF FEDERAL LAND BANKS.

Sec. 13. That every Federal land bank shall have power, subject to the limitations and requirements of this Act—

First. To issue, subject to the approval of the Federal Farm Loan Board, and to sell farm loan bonds of the kinds authorized in this Act, to buy the same for its own account, and to retire the same at or before maturity.

Second. To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting.

Third. To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under section twelve of this Act, and to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments and other sums payable under the terms, conditions, and covenants of the mortgages and of the bonds secured thereby.

Fourth. To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Federal Farm Loan Board in writing.

Fifth. To deposit its securities, and its current funds subject to check, with any member bank of the Federal Reserve System, and to receive interest on the same as may be agreed.

Sixth. To accept deposits of securities or of current funds from national farm loan associations holding its shares, but to pay no interest on such deposits.

Seventh. To borrow money, to give security therefor, and to pay interest thereon.

Eighth. To buy and sell United States bonds.

Ninth. To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in section twelve.

RESTRICTIONS ON FEDERAL LAND BANKS.

SEC. 14. That no Federal land bank shall have power—

First. To accept deposits of current funds payable upon demand except from its own stockholders, or to transact any banking or other business not expressly authorized by the provisions of this Act.

Second. To loan on first mortgage except through national farm loan associations as provided in section seven and section eight of this Act, or through agents as provided in section fifteen.

Third. To accept any mortgages on real estate except first mortgages created subject to all limitations imposed by section twelve of this Act, and those taken as additional security for existing loans.

Fourth. To issue or obligate itself for outstanding farm loan bonds in excess of twenty times the amount of its capital and surplus, or to receive from any national farm loan association additional mortgages when the principal remaining unpaid upon mortgages already received from such association shall exceed twenty times the amount of its capital stock owned by such association.

Fifth. To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act.

AGENTS OF FEDERAL LAND BANKS.

SEC. 15. That whenever, after this Act shall have been in effect one year, it shall appear to the Federal Farm Loan Board that national farm loan associations have not been formed, and are not likely to be formed, in any locality, because of peculiar local conditions, said board may, in its discretion, authorize Federal land banks to make loans on farm lands through agents approved by said board.

Such loans shall be subject to the same conditions and restrictions as if the same were made through national farm loan associations, and each borrower shall contribute five per centum of the amount of his loan to the capital of the Federal land bank, and shall become the owner of as much capital stock of the land bank as such contribution shall warrant.

No agent other than a duly incorporated bank, trust company, mortgage company, or savings institution, chartered by the State in which it has its principal office, shall be employed under the provisions of this section.

Federal land banks may pay to such agents the actual expense of appraising the land offered as security for a loan, examining and certifying the title thereof, and making exe-

cuting, and recording the mortgage papers; and in addition may allow said agents not to exceed one-half of one per centum per annum upon the unpaid principal of said loan, such commission to be deducted from dividends payable to the borrower on his stock in the Federal land bank.

Actual expenses paid to agents under the provisions of this section shall be added to the face of the loan and paid off in amortization payments subject to the limitations provided in subsection ninth of section thirteen of this Act.

Said agents, when required by the Federal land banks, shall collect and forward to such banks without charge all interest and amortization payments on loans indorsed by them.

Any agent negotiating any such loan shall indorse the same and become liable for the payment thereof, and for any default by the mortgagor, on the same terms and under the same penalties as if the loan had been originally made by said agent as principal and sold by said agent to said land bank, but the aggregate of the unpaid principal of mortgage loans received from any such agent shall not exceed ten times its capital and surplus.

If at any time the district represented by any agent under the provisions of this section shall, in the judgment of the Federal Farm Loan Board, be adequately served by national farm loan associations, no further loans shall be negotiated therein by agents under this section.

JOINT STOCK LAND BANKS.

Sec. 16. That corporations, to be known as joint stock land banks, for carrying on the business of lending on farm mortgage security and issuing farm loan bonds may be formed by any number of natural persons not less than ten. They shall be organized subject to the requirements and under the conditions set forth in section four of this Act, so far as the same may be applicable: *Provided*, That the board of directors of every joint stock land bank shall consist of not less than five members.

Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts,

delta, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

Except as otherwise provided, joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on, Federal land banks by this Act, so far as such restrictions and conditions are applicable: *Provided, however,* That the Government of the United States shall not purchase or subscribe for any of the capital stock of any such bank; and each shareholder of any such bank shall have the same voting privileges as holders of shares in national banking associations.

No joint stock land bank shall have power to issue or obligate itself for outstanding farm loan bonds in excess of fifteen times the amount of its capital and surplus, or to receive deposits or to transact any banking or other business not expressly authorized by the provisions of this Act.

No joint stock land bank shall be authorized to do business until capital stock to the amount of at least \$250,000 has been subscribed, one-half thereof paid in cash and the balance subject to call by the board of directors, and a charter has been issued to it by the Federal Farm Loan Board.

No joint stock land bank shall issue any bonds until after the capital stock is entirely paid up.

Farm loan bonds issued by joint stock land banks shall be so engraved as to be readily distinguished in form and color from farm loan bonds issued by Federal land banks, and shall otherwise bear such distinguishing marks as the Federal Farm Loan Board shall direct.

Joint stock land banks shall not be subject to the provisions of subsection (b) of section seventeen of this Act as to interest rates on mortgage loans or farm loan bonds, nor to the provisions of subsections first, fourth, sixth, seventh, and tenth of section twelve as to restrictions on mortgage loans: *Provided, however,* That no loans shall be made which are not secured by first mortgages on farm lands within the State in which such joint stock land bank has its principal office, or within some one State contiguous to such State. Such joint stock land banks shall be subject to all other re-

strictions on mortgage loans imposed on Federal land banks in section twelve of this Act.

Joint stock land banks shall in no case charge a rate of interest on farm loans exceeding by more than one per centum the rate of interest established for the last series of farm loan bonds issued by them.

Joint stock land banks shall in no case demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act.

Each joint stock land bank organized under this Act shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this Act. Such bonds shall be in form prescribed by the Federal Farm Loan Board, and it shall be stated in such bonds that such bank is organized under section sixteen of this Act, is under Federal supervision, and operates under the provisions of this Act.

POWERS OF FEDERAL FARM LOAN BOARD.

SEC. 17. That the Federal Farm Loan Board shall have power—

(a) To organize and charter Federal land banks, and to charter national farm loan associations and joint stock land banks subject to the provisions of this Act, and in its discretion to authorize them to increase their capital stock.

(b) To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this Act, said rates to be uniform so far as practicable.

(c) To grant or refuse to Federal land banks, or joint stock land banks, authority to make any specific issue of farm loan bonds.

(d) To make rules and regulations respecting the charges made to borrowers on loans under this Act for expenses in appraisal, determination of title, and recording.

(e) To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this Act.

(f) To prescribe the form and terms of farm loan bonds, and the form, terms, and penal sums of all surety bonds required under this Act and of such other surety bonds as

they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

(g) To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement.

(h) To suspend or to remove for cause any district director or any registrar, appraiser, examiner, or other official appointed by said board under authority of section three of this Act, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank.

(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act.

APPLICATIONS FOR FARM LOAN BONDS.

SEC. 18. That any Federal land bank, or joint stock land bank, which shall have voted to issue farm loan bonds under this Act, shall make written application to the Federal Farm Loan Board, through the farm loan registrar of the district, for approval of such issue. With said application said land bank shall tender to said farm loan registrar as collateral security first mortgages on farm lands qualified under the provisions of section twelve, section fifteen, or section sixteen of this Act, or United States Government bonds, not less in aggregate amount than the sum of the bonds proposed to be issued. Said bank shall furnish with such mortgages a schedule containing a description thereof and such further information as may be prescribed by the Federal Farm Loan Board.

Upon receipt of such application said farm loan registrar shall verify said schedule and shall transmit said application and said schedule to the Federal Farm Loan Board, giv-

ing such further information pertaining thereto as he may possess. The Federal Farm Loan Board shall forthwith cause to be made such investigation and appraisalment of the securities tendered as it shall deem wise, and it shall grant in whole or in part, or reject entirely, such application.

The Federal Farm Loan Board shall promptly transmit its decision as to any issue of farm loan bonds to the land bank applying for the same and to the farm loan registrar of the district. Said registrar shall furnish, in writing, such information regarding any issue of farm loan bonds as the Federal Farm Loan Board may at any time require.

No issue of farm loan bonds shall be authorized unless the Federal Farm Loan Board shall approve such issue in writing.

ISSUE OF FARM LOAN BONDS.

SEC. 19. That whenever any farm loan registrar shall receive from the Federal Loan Board notice that it has approved by any issue of farm loan bonds under the provisions of section eighteen he shall forthwith take such steps as may be necessary, in accordance with the provisions of this Act, to insure the prompt execution of said bonds and the delivery of the same to the land bank applying therefor.

Whenever the Federal Farm Loan Board shall reject entirely any application for an issue of farm loan bonds, the first mortgages and bonds tendered to the farm loan registrar as collateral security therefor shall be forthwith returned to said land bank by him.

Whenever the Federal Farm Loan Board shall approve an issue of farm loan bonds, the farm loan registrar having the custody of the first mortgages and bonds tendered as collateral security for such issue of bonds shall retain in his custody those first mortgages and bonds which are to be held as collateral security, and shall return to the bank owning the same any of said mortgages and bonds which are not to be held by him as collateral security. The land bank which is to issue said farm loan bonds shall transfer to said registrar, by assignment, in trust, all first mortgages and bonds which are to be held by said registrar as collateral security, said assignment providing for the right of redemption at any

time by payment as provided in this Act and reserving the right of substitution of other mortgages qualified under sections twelve, fifteen, and sixteen of this Act. Said mortgages and bonds shall be deposited in such deposit vault or bank as the Federal Farm Loan Board shall approve, subject to the control of said registrar and in his name as trustee for the bank issuing the farm loan bonds and for the prospective holders of said farm loan bonds.

No mortgage shall be accepted by a farm loan registrar from a land bank as part of an offering to secure an issue of farm loan bonds, either originally or by substitution, except first mortgages made subject to the conditions prescribed in said sections twelve, fifteen, and sixteen.

It shall be the duty of each farm loan registrar to see that the farm loan bonds delivered by him and outstanding do not exceed the amount of collateral security pledged therefor. Such registrar may, in his discretion, temporarily accept, in place of mortgages withdrawn, United States Government bonds or cash.

The Federal Farm Loan Board may, at any time, call upon any land bank for additional security to protect the bonds issued by it.

FORM OF FARM LOAN BONDS.

SEC. 20. That bonds provided for in this Act shall be issued in denominations of \$25, \$50, \$100, \$500, and \$1,000; they shall run for specified minimum and maximum periods, subject to payment and retirement, at the option of the land bank, at any time after five years from the date of their issue. They shall have interest coupons attached, payable semiannually, and shall be issued in series of not less than \$50,000, the amount and terms to be fixed by the Federal Farm Loan Board. They shall bear a rate of interest not to exceed five per centum per annum.

The Federal Farm Loan Board shall prescribe rules and regulations concerning the circumstances and manner in which farm loan bonds shall be paid and retired under the provisions of this Act.

Farm loan bonds shall be delivered through the registrar of the district to the bank applying for the same.

In order to furnish farm loan bonds for delivery at the Federal land banks and joint stock land banks, the Secretary of the Treasury is hereby authorized to prepare suitable bonds in such form, subject to the provisions of this Act, as the Federal Farm Loan Board may approve, such bonds when prepared to be held in the Treasury subject to delivery upon order of the Federal Farm Loan Board. The engraved plates, dies, bed-pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. Any expenses incurred in the preparation, custody, and delivery of such farm loan bonds shall be paid by the Secretary of the Treasury from any funds in the Treasury not otherwise appropriated: *Provided, however,* That the Secretary shall be reimbursed for such expenditures by the Federal Farm Loan Board through assessment upon the farm land banks in proportion to the work executed. They may be exchanged into registered bonds of any amount, and reexchanged into coupon bonds, at the option of the holder, under rules and regulations to be prescribed by the Federal Farm Loan Board.

SPECIAL PROVISIONS OF FARM LOAN BONDS.

SEC. 21. That each land bank shall be bound in all respects by the acts of its officers in signing and issuing farm loan bonds, and by the acts of the Federal Farm Loan Board in authorizing their issue.

Every Federal land bank issuing farm loan bonds shall be primarily liable therefor, and shall also be liable, upon presentation of farm loan bond coupons, for interest payments due upon any farm loan bonds issued by other Federal land banks and remaining unpaid in consequence of the default of such other land banks; and every such bank shall likewise be liable for such portion of the principal of farm loan bonds so issued as shall not be paid after the assets of any such other land banks shall have been liquidated and distributed: *Provided,* That such losses, if any, either of interest or of principal, shall be assessed by the Federal Farm Loan Board against solvent land banks liable therefor in proportion to the amount of farm loan bonds which each may have outstanding at the time of such assessment.

Every Federal land bank shall by appropriate action of its board of directors, duly recorded in its minutes, obligate itself to become liable on farm loan bonds as provided in this section.

Every farm loan bond issued by a Federal land bank shall be signed by its president and attested by its secretary, and shall contain in the face thereof a certificate signed by the Farm Loan Commissioner to the effect that it is issued under the authority of the Federal Farm Loan Act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is not taxable by National, State, municipal, or local authority; that it is issued against collateral security of United States Government bonds, or indorsed first mortgages on farm lands, at least equal in amount to the bonds issued; and that all Federal land banks are liable for the payment of each bond.

APPLICATION OF AMORTIZATION AND INTEREST PAYMENTS.

SEC. 22. That whenever any Federal land bank, or joint stock land bank, shall receive any interest, amortization or other payments upon any first mortgage or bond pledged as collateral security for the issue of farm loan bonds, it shall forthwith notify the farm loan registrar of the items so received. Said registrar shall forthwith cause such payment to be duly credited upon the mortgage entitled to such credit. Whenever any such mortgage is paid in full, said registrar shall cause the same to be canceled and delivered to the proper land bank, which shall promptly satisfy and discharge the lien of record and transmit such canceled mortgage to the original maker thereof, or his heirs, administrators, executors, or assigns.

Upon written application by any Federal land bank, or joint stock land bank, to the farm loan registrar, it may be permitted, in the discretion of said registrar, to withdraw any mortgages or bonds pledged as collateral security under this Act, and to substitute therefor other similar mortgages or United States Government bonds not less in amount than the mortgages or bonds desired to be withdrawn.

Whenever any farm loan bonds, or coupons or interest payments of such bonds, are due under their terms, they shall

be payable at the land bank by which they were issued, in gold or lawful money, and upon payment shall be duly canceled by said bank. At the discretion of the Federal Farm Loan Board, payment of any farm loan bond or coupon or interest payment may, however, be authorized to be made at any Federal land bank, any joint stock land bank, or any other bank, under rules and regulations to be prescribed by the Federal Farm Loan Board.

When any land bank shall surrender to the proper farm loan registrar any farm loan bonds of any series, canceled or uncanceled, said land bank shall be entitled to withdraw first mortgages and bonds pledged as collateral security for any of said series of farm loan bonds to an amount equal to the farm loan bonds so surrendered, and it shall be the duty of said registrar to permit and direct the delivery of such mortgages and bonds to such land bank.

Interest payments on hypothecated first mortgages shall be at the disposal of the land bank pledging the same, and shall be available for the payment of coupons and the interest of farm loan bonds as they become due.

Whenever any bond matures, or the interest on any registered bond is due, or the coupon on any coupon bond matures, and the same shall be presented for payment as provided in this Act, the full face value thereof shall be paid to the holder.

Amortization and other payments on the principal of first mortgages held by a farm loan registrar as collateral security for the issue of farm loan bonds shall constitute a trust fund in the hands of the Federal land bank or joint stock land bank receiving the same, and shall be applied or employed as follows:

In the case of a Federal land bank—

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds issued by said bank or by any other Federal land bank.

(c) To loan on first mortgages on farm lands within the land bank district, qualified under this Act as collateral security for an issue of farm loan bonds.

(d) To purchase United States Government bonds.

In the case of a joint stock land bank—

(a) To pay off farm loan bonds issued by said bank as they mature.

(b) To purchase at or below par farm loan bonds.

(c) To loan on first mortgages qualified under section sixteen of this Act.

(d) To purchase United States Government bonds.

The farm loan bonds, first mortgages, United States Government bonds, or cash constituting the trust fund aforesaid, shall be forthwith deposited with the farm loan registrar as substituted collateral security in place of the sums paid on the principal of indorsed mortgages held by him in trust.

Every Federal land bank, or joint stock land bank, shall notify the farm loan registrar of the disposition of all payments made on the principal of mortgages held as collateral security for an issue of farm loan bonds, and said registrar is authorized, at his discretion, to order any of such payments, or the proceeds thereof, wherever deposited or however invested, to be immediately transferred to his account as trustee aforesaid.

RESERVE AND DIVIDENDS OF LAND BANKS.

SEC. 23. That every Federal land bank, and every joint stock land bank, shall semiannually carry to reserve account twenty-five per centum of its net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said land bank. Whenever said reserve shall have been impaired, said balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached the sum of twenty per centum of the outstanding capital stock, five per centum of the net earnings shall be annually added thereto. For the period of two years from the date when any default occurs in the payment of the interest, amortization installments, or principal on any first mortgage, by both mortgagor and indorser, the amount so defaulted shall be carried to a suspense account, and at the end of the two-year period specified, unless collected, shall be debited to reserve account.

After deducting the twenty-five per centum or the five per centum hereinbefore directed to be deducted for credit to reserve account, any Federal land bank or joint stock land bank may declare a dividend to shareholders of the whole or any part of the balance of its net earnings. The reserves of land banks shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board.

RESERVE AND DIVIDENDS OF NATIONAL FARM LOAN ASSOCIATIONS.

SEC. 24. That every national farm loan association shall, out of its net earnings, semiannually carry to reserve account a sum not less than ten per centum of such net earnings until said reserve account shall show a credit balance equal to twenty per centum of the outstanding capital stock of said association.

Whenever said reserve shall have been impaired, said credit balance of twenty per centum shall be fully restored before any dividends are paid. After said reserve has reached said sum of twenty per centum, two per centum of the net earnings shall be annually added thereto.

After deducting the ten per centum or the two per centum hereinbefore directed to be credited to reserve account, said association may, at its discretion, declare a dividend to shareholders of the whole or any part of the balance of said net earnings.

The reserves of farm loan associations shall be invested in accordance with rules and regulations to be prescribed by the Federal Farm Loan Board.

Whenever any farm loan association shall be voluntarily liquidated a sum equal to its reserve account as herein required shall be paid to and become the property of the Federal land bank in which such loan association may be a shareholder.

DEFAULTED LOANS.

SEC. 25. That if there shall be default under the terms of any indorsed first mortgage held by a Federal land bank under the provisions of this Act, the national farm loan association or agent through which said mortgage was received by

said Federal land bank shall be notified of said default. Said association or agent may thereupon be required, within thirty days after such notice, to make good said default, either by payment of the amount unpaid thereon in cash, or by the substitution of an equal amount of farm loan bonds issued by said land bank, with all unmatured coupons attached.

EXEMPTION FROM TAXATION.

SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

INVESTMENT IN FARM LOAN BONDS.

SEC. 27. That farm loan bonds issued under the provisions of this Act by Federal land banks or joint stock land banks

shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.

Any member bank of the Federal Reserve System may buy and sell farm loan bonds issued under the authority of this Act.

Any Federal reserve bank may buy and sell farm loan bonds issued under this Act to the same extent and subject to the same limitations placed upon the purchase and sale by said banks of State, county, district, and municipal bonds under subsection (b) of section fourteen of the Federal Reserve Act approved December twenty-third, nineteen hundred and thirteen.

EXAMINATIONS.

Sec. 28. That the Federal Farm Loan Board shall appoint as many land bank examiners as in its judgment may be required to make careful examinations of the banks and associations permitted to do business under this Act.

Said examiners shall be subject to the same requirements, responsibilities and penalties as are applicable to national bank examiners under the national bank Act, the Federal Reserve Act and other provisions of law. Whenever directed by the Federal Farm Loan Board, said examiners shall examine the condition of any national farm loan association and report the same to the Farm Loan Commissioner. They shall examine and report the condition of every Federal land bank and joint stock land bank at least twice each year.

Said examiners shall receive salaries to be fixed by the Federal Farm Loan Board.

DISSOLUTION AND APPOINTMENT OF RECEIVERS.

Sec. 29. That upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided*, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest

and amortization installments on loans indorsed by national farm loan associations shall amount to at least \$150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct.

Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received.

Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations.

If any national farm loan association shall be declared insolvent and a receiver shall be appointed therefor by the Federal Farm Loan Board, the stock held by it in the Federal land bank of its district shall be canceled without impairment of its liability and all payments on such stock, with accrued dividends, if any, since the date of the last dividend shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided*, That in estimating said debts contingent liabilities incurred by national farm loan associations under the provisions of this Act on account of default of principal or interest of indorsed mortgages shall be estimated and included as a debt, and said contingent liabilities shall be determined by agreement between the

receiver and the Federal land bank of the district, subject to the approval of the Federal Farm Loan Board, and if said receiver and said land bank can not agree, then by the decision of the Farm Loan Commissioner, and the amount thus ascertained shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock. Whenever the capital stock of a Federal land bank shall be reduced, the board of directors shall cause to be executed a certificate to the Federal Farm Loan Board, showing such reduction of capital stock, and, if said reduction shall be due to the insolvency of a national farm loan association, the amount repaid to such association.

No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board.

STATE LEGISLATION.

Sec. 30. That it shall be the duty of the Farm Loan Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, and the foreclosure of mortgages or other instruments securing loans, as well as providing homestead and other exemptions and granting the power to waive such exemptions as respects first mortgages, are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages.

Pending the making of such examination in the case of any State, the Federal Farm Loan Board may declare first mortgages on farm lands situated within such State ineligible as the basis for an issue of farm loan bonds; and if said examination shall show that the laws of any such State afford insufficient protection to the holder of first mortgages of the kinds provided in this Act, said Federal Farm Loan Board may declare said first mortgages on land situated in

such State ineligible during the continuance of the laws in question. In making his examination of the laws of the several States and forming his conclusions thereon said Farm Loan Commissioner may call upon the office of the Attorney General of the United States for any needed legal advice or assistance, or may employ special counsel in any State where he considers such action necessary.

At the request of the Executive of any State the Federal Farm Loan Board shall prepare a statement setting forth in what respects the requirements of said board can not be complied with under the existing laws of such State.

PENALTIES.

Sec. 31. That any applicant for a loan under this Act who shall knowingly make any false statement in his application for such loan, and any member of a loan committee or any appraiser provided for in this Act who shall willfully overvalue any land offered as security for loans under this Act, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both. Any examiner appointed under this Act who shall accept a loan or gratuity from any land bank or national farm loan association examined by him, or from any person connected with any such bank or association in any capacity, shall be punished by a fine of not exceeding \$5,000, or by imprisonment not exceeding one year, or both, and may be fined a further sum equal to the money so loaned or gratuity given, and shall forever thereafter be disqualified from holding office as an examiner under the provisions of this Act. No examiner, while holding such office, shall perform any other service for compensation for any bank or banking or loan association, or for any person connected therewith in any capacity.

Any person who shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any bond, coupon, or paper in imitation of, or purporting to be in imitation of, the bonds or coupons issued by any land bank or national farm loan association, now or hereafter authorized and acting under the laws of the United States; or any person who shall pass, utter, or pub-

lish, or attempt to pass, utter, or publish any false, forged, or counterfeited bond, coupon, or paper purporting to be issued by any such bank or association, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering any such bond, coupon, or paper, or shall pass, utter, or publish as true any falsely altered or spurious bond, coupon, or paper issued, or purporting to have been issued, by any such bank or association, knowing the same to be falsely altered or spurious, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Other than the usual salary or director's fee paid to any officer, director, or employee of a national farm loan association, a Federal land bank, or a joint stock land bank, and other than a reasonable fee paid by such association or bank to any officer, director, attorney, or employee for services rendered, no officer, director, attorney, or employee of an association or bank organized under this Act shall be a beneficiary of or receive, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank. No land bank or national farm loan association organized under this Act shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized. No examiner, public or private, shall disclose the names of borrowers to other than the proper officers of a national farm loan association or land bank without first having obtained express permission in writing from the Farm Loan Commissioner or from the board of directors of such association or bank, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress or of either House duly authorized. Any person violating any provision of this paragraph shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding one year, or both.

Any person connected in any capacity with any national farm loan association, Federal land bank, or joint stock land bank, who embezzles, abstracts, or willfully misapplies any moneys, funds, or credits thereof, or who without authority

from the directors draws any order, assigns any note, bond, draft, mortgage, judgment, or decree thereof, or who makes any false entry in any book, report, or statement of such association or land bank with intent in either case to defraud such institution or any other company, body politic or corporate, or any individual person, or to deceive any officer of a national farm loan association or land bank or any agent appointed to examine into the affairs of any such association or bank, and every person who with like intent aids or abets any officer, clerk, or agent in any violation of this section, shall be punished by a fine of not exceeding \$5,000 or by imprisonment not exceeding five years, or both.

Any person who shall deceive, defraud, or impose upon, or who shall attempt to deceive, defraud, or impose upon, any person, firm, or corporation by making any false pretense or representation regarding the character, issue, security, or terms of any farm loan bond, or coupon, issued under the terms of this Act; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act by one class of land banks is a farm loan bond, or coupon, issued by another class of banks; or by falsely pretending or representing that any farm loan bond, or coupon, issued under the terms of this Act, or anything contained in said farm loan bond, or coupon, is anything other than, or different from, what it purports to be on the face of said bond or coupon, shall be fined not exceeding \$500 or imprisoned not exceeding one year, or both.

The Secretary of the Treasury is hereby authorized to direct and use the Secret Service Division of the Treasury Department to detect, arrest, and deliver into custody of the United States marshal having jurisdiction, any person or persons violating any of the provisions of this section.

GOVERNMENT DEPOSITS.

SEC. 32. That the Secretary of the Treasury is authorized, in his discretion, upon the request of the Federal Farm Loan Board, to make deposits for the temporary use of any Federal land bank, out of any money in the Treasury not otherwise appropriated. Such Federal land bank shall issue to

the Secretary of the Treasury a certificate of indebtedness for any such deposit, bearing a rate of interest not to exceed the current rate charged for other Government deposits, to be secured by farm loan bonds or other collateral, to the satisfaction of the Secretary of the Treasury. Any such certificate shall be redeemed and paid by such land bank at the discretion of the Secretary of the Treasury. The aggregate of all sums so deposited by the Secretary of the Treasury shall not exceed the sum of \$6,000,000 at any one time.

ORGANIZATION EXPENSES.

SEC. 33. That the sum of \$100,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Federal Farm Loan Board, for the purpose of carrying into effect the provisions of this Act, including the rent and equipment of necessary offices.

LIMITATION OF COURT DECISIONS.

SEC. 34. That if any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

REPEALING CLAUSE.

SEC. 35. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved.

Approved, July 17, 1916.

EXHIBIT B.

An Act Amending section thirty-two, Federal Farm Loan Act, approved July seventeenth, nineteen hundred and sixteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That the Federal Farm Loan Act, approved July seventeenth, nineteen hundred and sixteen, is hereby amended by adding at the end of section thirty-two the following:

"The Secretary of the Treasury is further authorized, in his discretion, upon the request of the Federal Farm Loan Board, from time to time during the fiscal years ending June thirtieth, nineteen hundred and eighteen, and June thirtieth, nineteen hundred and nineteen, respectively, to purchase at par and accrued interest with any funds in the Treasury not otherwise appropriated, from any Federal land bank, farm loan bonds issued by such bank.

"Such purchases shall not exceed the sum of \$100,000,000 in either of such fiscal years. Any Federal land bank may at any time repurchase at par and accrued interest for the purpose of redemption or resale any bonds so purchased from it and held in the Treasury.

"The bonds of any Federal land bank so purchased by the Secretary of the Treasury, and held in the Treasury under the provisions of this amendment one year after the termination of the pending war, shall upon thirty days' notice from the Secretary of the Treasury be redeemed or repurchased by such bank at par and accrued interest.

"The temporary organization of any Federal land bank as provided in section four of said Federal Farm Loan Act shall be continued so long as any farm loan bonds purchased from it under the provisions of this amendment shall be held by the Treasury, and until the subscriptions to stock in such bank by national farm loan associations shall equal the amount of stock held in such bank by the Government of the United States."

SEC. 2. That all Acts or parts of Acts inconsistent with this Act are hereby repealed, and this Act shall take effect upon its passage. The right to amend, alter, or repeal this Act is hereby expressly reserved.

Approved, January 18, 1918.

EXHIBIT C.

Farm mortgage loans—average rates for interest and commission.

Geographic division and State.	Average interest rate.	Average annual commission. ¹	Interest plus commission.
New England:			
Maine.....	6.1	0.1	6.2
New Hampshire.....	5.3	(²)	5.3
Vermont.....	5.6	(²)	5.6
Massachusetts.....	5.6	(²)	5.6
Rhode Island.....	5.7	.2	5.9
Connecticut.....	5.7	(²)	5.7
Middle Atlantic:			
New York.....	5.5	.1	5.6
New Jersey.....	5.5	.3	5.8
Pennsylvania.....	5.5	.3	5.8
East North Central:			
Ohio.....	5.9	.2	6.1
Indiana.....	5.8	.4	6.2
Illinois.....	5.7	.3	6.0
Michigan.....	6.3	.3	6.6
Wisconsin.....	5.7	.1	5.8
West North Central:			
Minnesota.....	6.3	.5	6.8
Iowa.....	5.6	.3	5.9
Missouri.....	6.2	.6	6.8
North Dakota.....	6.9	1.8	8.7
South Dakota.....	7.0	1.0	8.0
Nebraska.....	6.3	.8	7.1
Kansas.....	6.1	.8	6.9
South Atlantic:			
Delaware.....	5.6	(²)	5.6
Maryland.....	5.7	.4	6.1
Virginia.....	6.1	.7	6.8
West Virginia.....	6.2	.2	6.4
North Carolina.....	6.3	1.4	7.7
South Carolina.....	7.8	.6	8.4
Georgia.....	7.6	1.1	8.7
Florida.....	9.0	.6	9.6
East South Central:			
Kentucky.....	6.7	.4	7.1
Tennessee.....	7.3	.6	7.9
Alabama.....	8.7	.7	9.4
Mississippi.....	8.0	.5	8.5
West South Central:			
Arkansas.....	9.0	.6	9.6
Louisiana.....	8.2	.4	8.6
Oklahoma.....	6.6	1.8	8.4
Texas.....	8.4	.6	9.0

¹ Where the report shows a commission paid once for all in advance on a loan running more than one year, the equivalent annual commission is used.

² Less than one-tenth of 1 per cent.

Farm mortgage loans—average rates for interest and commission—Con.

Geographic division and State.	Average interest rate.	Average annual commission.	Interest plus commission.
Mountain:			
Montana.....	8.4	1.6	10.0
Idaho.....	8.2	.7	8.9
Wyoming.....	9.2	.8	10.0
Colorado.....	8.3	.6	8.9
New Mexico.....	9.7	.8	10.5
Arizona.....	9.1	.3	9.4
Utah.....	8.6	.4	9.0
Pacific:			
Washington.....	7.9	.8	8.7
Oregon.....	7.7	.3	8.0
California.....	7.4	.2	7.6

No amortization loans.

Commissions on mortgage renewals.

High interest rates.

Even so, no sufficient mortgage credit.

EXHIBIT D.

TABLE 1.—Number and percentage of farms of specified tenure in the United States, 1880 to 1910.

[From decennial census of agriculture.]

Year.	Number of farms operated by—		Percentage of farms operated by—	
	Owners. ¹	Tenants.	Owners. ¹	Tenants.
1880 ²	2,984,306	1,024,601	74.5	25.5
1890.....	3,269,728	1,294,913	71.6	28.4
1900.....	3,712,408	2,024,964	64.7	35.3
1910.....	4,006,826	2,354,676	63.0	37.0

¹ Includes farms operated by owners, part owners, owners and tenants, and managers.² Not including farms with an area of less than 3 acres which reported the sale of less than \$5 worth of products in the census year.

TABLE 2.—*Urban and rural population in the United States, 1880 to 1910.*

[Urban population resides in incorporated places of 2,500 inhabitants and over.]

Year.	Number.		Percentage.	
	Urban.	Rural.	Urban.	Rural.
1880.....	14,772,438	35,383,345	29.5	70.5
1890.....	22,720,223	40,227,491	36.1	63.9
1900.....	30,797,185	45,197,390	40.5	59.5
1910.....	42,623,383	49,398,883	46.3	53.7

NOTE.—Quotation from abstract of the Thirteenth Census.

TABLE 3.—*Number and percentage of farms in the United States mortgaged and free from mortgage, 1890 to 1910.*

[From decennial census.]

Year.	Number.		Percentage of owned farms—	
	Mortgaged.	Free from mortgage.	Mortgaged.	Free from mortgage.
1890.....	886,957	2,255,789	28.2	71.8
1900.....	1,127,749	2,510,654	31.1	68.9
1910.....	1,327,439	2,621,283	33.6	66.4

NOTE.—The figures are for farm families in 1890 and for farms in 1900 and 1910.

EXHIBIT E.

RURAL CREDIT SYSTEM IN EUROPE.

SUMMARY.

Germany.—The rural credit organizations of Germany from which the systems of other European countries have been largely modeled may be divided into two classes, the one represented by the *Landschaften*, Government controlled institutions, which loan money to their members on mortgage by issuing them bonds, which they in turn sell, and the *Raiffeisen* societies, which are not under Government control, which accept deposits from their members and borrow from a central institution and loan it to their members, engaging also in other cooperative rural enterprises.

France.—The Government has subsidized the Credit Foncier, which makes short and long term loans on mortgage, and whose purpose it is to assist in the repayment of the mortgaged indebtedness of France. Local credit associations have also been formed which are intermediaries between the regional banks and their members. The Bank of France advances money to these local associations without interest.

England.—Government aid has been given to Irish peasants by advancing them money at low rates of interest to assist in the purchase of land. Private rural credit is provided by the Agricultural Society organized under the companies' act, which society also engages in other forms of rural cooperation.

Russia.—The Government assist the rural credit through the Peasants Land Bank, which makes long-time loans on mortgages at low rates of interest to peasants to enable them to purchase land. Private local credit associations modeled after the Raiffeisen banks of Germany also exist, but these charge much higher rates of interest.

Italy.—Local cooperative credit associations obtain money from the larger banks and loan this to their members. Mortgage loans may also be made from some of the larger banks, the Government authorizing them to engage in this business.

Switzerland.—The Canton banks, whose capital is supplied by the Government, make loans on real estate. Private banks do the same business, but their interest rates are higher. Institutions on the Raiffeisen plan have also been organized.

Denmark.—Government aid is furnished through two Small Holders' Credit Associations, to which the Government has appropriated money to be loaned to small farmers. There also exist societies similar to the *Landschaften* in Germany but without Government supervision or aid.

GERMANY.

THE LANDSCHAFTEN SYSTEM OF PRUSSIA.

The *landschaften* are mutual loan associations organized in the various agricultural districts. The landowners of a

district are formed into an organization called a landschaft. Each member is entitled to credit according to the amount of land he owns and guarantees the obligations of the landschaft.

The landschaften issue bonds payable to bearer secured by the general credit and property of the landschaften and the guaranty of the members. These bonds are bought and sold in the money market.

Loans are made to the members by issuing them bonds which they sell to raise money. The members give in return their promise to pay and a first mortgage on their land. Bonds may be issued to two-thirds of the value of the land. The "mortgagee" pays $3\frac{1}{2}$ per cent interest plus $1\frac{1}{2}$ to 2 per cent per year amortization.

The landschaften possessed no capital to begin with but have built up sinking funds from the amortization payments. The following table indicates the extent of their operations from the time of organization in 1796 up to 1911-12:

	Marks.
Mortgage loans and bonds issued.....	8,000,000,000
At 3 per cent.....	420,000,000
At $3\frac{1}{2}$ per cent.....	2,000,000,000
At 4 per cent.....	500,000,000
Sinking fund collected.....	192,000,000
Remaining guarantee and reserve fund.....	50,000,000
Capital saved from administration cost.....	56,000,000

The Landschaften are under State supervision, at their head being a general Landschaften board whose members are public authorities. Within prescribed limits, however, the Landschaften are autonomous.

Since their organization there have been no failures, no foreclosures or other litigation, no repudiation, and no depreciation or shrinkage of security. Landschaften debentures always find a ready market and are considered safe investments for savings banks.

RAIFFEISEN BANKS AND SOCIETIES.

In addition to the Landschaften there exist in Germany cooperative credit societies which do not receive any Government aid. These owe their existence largely to the ef-

forts of the man from whom they derive their name. The two functions which enter into the organization of credit on Raiffeisen lines are the organization of the rural population into local credit societies and the organization of these societies as a collective body federated into the Agricultural Central Loan Bank for Germany.

The local credit societies are organizations of unlimited liability in their members. Money is raised by savings deposits and from loans obtained from the Central organization. The purpose of the societies is to provide money for its members, either in the form of specific loans, or current accounts, and also to provide a means for cooperative buying and selling. Adequate security is required for all loans and the object for which the money is to be used is taken into consideration. The loans are repayable after a long or short period depending upon circumstances.

The Agricultural Central Loan Bank was organized in 1876 by Raiffeisen. It is a joint-stock company and its purpose is to carry on a banking and credit business and to assist in the collective purchase and sale of agricultural requirements and products. Its funds are raised by the issue of shares by deposits received and by the issue of long-time debentures. The money so raised is applied in credits given on current accounts to local cooperative banks and societies and for discounting acceptances in conformity with the practice of the Imperial Bank.

In 1877 Raiffeisen organized the General Union Rural Societies for Germany embracing all sorts of rural cooperative societies for the purpose of aiding them in carrying out their work.

FRANCE.

CREDIT FONCIER.

This is a Government subsidized and controlled bank which has a monopoly for 25 years. The Government control is exercised through the appointment of a governor and two vice governors.

The bank does two kinds of business—(1) Loans to municipalities, and (2) mortgage loans. Mortgage loans are made on town or agricultural property and take three forms:

(a) Short term loans (9 years or less) on mortgages. These loans are not repayable by amortization, and the mortgages can not be redeemed until the expiration of the term.

(b) Long term mortgage loans (10 to 70 years). These are payable by amortization at a rate of $1\frac{1}{2}$ per cent per year, and can be paid in full before the expiration of the term.

(c) Current accounts on mortgage guarantees. A line of credit is given on mortgage security which may be used like a banking account.

The interest on these loans varies from 4 to 4.65 per cent. The capital is raised by the banks by issue of bonds repayable by annuities in the maximum period of 75 years.

The purpose of the Credit Foncier is to provide for the repayment of the mortgaged indebtedness of France. Since its origin it has loaned more than 9,000,000,000 francs and in 1913 had outstanding loans to the amount of 5,000,000,000 francs.

CREDIT AGRICOLE

A local agricultural credit bank is formed by the farmers in one community organizing, raising a small initial capital and depositing it with the regional bank. This bank then furnishes the money required for loans to the members on the deposit of suitable security. Loans are made on mortgage or on the pledge of agricultural products.

The associations are subsidized by the Government in that money is supplied by the Bank of France without interest.

BANK OF FRANCE

The Bank of France as a rediscount bank is not of great advantage to farmers, since farmers are not "traders," and the rediscount machinery is organized primarily for "traders."

The bank has helped in the advance of agriculture, however, first by the advance of 40,000,000 francs to the Government for the purposes of agricultural credit, repayable without interest, and also pay an annual grant in proportion to its profits, which usually is considerably in excess of 2,000,000 francs. Ninety million francs have been advanced in this way.

ENGLAND.

The English Government has bought up many Irish estates and sold them direct to Irish farmers on long-time payments at a low rate of interest, and appropriations for this purpose have amounted to \$2,000,000,000.

In 1913 the English Government appropriated \$500,000,000 to be loaned to Irish peasants at $2\frac{1}{2}$ per cent for 68 years. To the interest is added an amortization payment of three-fourths per cent.

THE AGRICULTURAL SOCIETY.

This society was organized in England under the companies act. Its purpose is cooperative buying, selling, transportation, agriculture, insurance, and agricultural cooperative credit. It is primarily a private institution, but it has received small appropriations from the Government at various times.

RUSSIA.

THE PEASANTS' LAND BANK.

This is a Government bank which makes loans to peasants on mortgages. The loans run from 40 to 60 years with an amortization payment each year plus $4\frac{1}{2}$ per cent interest. Loans are made to the extent of 90 per cent of the value of the land. They are used by the peasants chiefly as a means to purchase land, and since the bank's organization in 1883 some 20,000,000 small farms worth more than \$1,000,000,000 have been bought by peasants in this manner.

LOCAL CREDIT ASSOCIATIONS.

There are two types of credit associations which have grown up in Russia—the loan and saving association and credit association—the chief distinction being that the former has shares which its members must purchase and the latter has not, they being modeled very closely after the Raiffeisen banks of Germany. The sources of money for both are deposits, the loans from Government and postal savings banks, and the sale of shares. The interest charged by these associations is rather high, from 9 to 11 per cent.

ITALY.

Government assistance in the matter of agricultural credit in Italy has taken the form of authorizing the savings bank of the Bank of Naples to engage in the rural credit business, and in creating a special credit rural section of the Bank of Sicily. Credit is provided by these institutions through the channels of local organizations, preferably cooperative in form, and consists in rediscounting bills drawn by these intermediate credit institutions against farmers and in making loans to these institutions.

The local associations obtain their working capital from deposits by members and from the above-mentioned banks. They make loans on land and on personal credit both for the purpose of permanent improvements and to provide a working capital.

The Government has also authorized certain other banks, such as the banks of Milan and Bologna, to make long-time loans on mortgages.

SWITZERLAND.

CANTON BANKS.

The Government helps agricultural credit through canton banks, which in 1913 had been established in at least half the cantons of Switzerland. These are Government institutions whose capital is furnished by the cantons either by direct appropriation out of the treasury or by the issue of Government bonds, the interest on which is paid through the canton banks. The bankers pay about 4 per cent for this money. In addition, the bank is a depository for savings.

The bank makes loans on real estate, both town and agricultural, from one-third to three-fourths its value. These loans are often on paper maturing six months after demand, but the banks do not call the loans if the interest is paid up. Amortization loans are also made, a one-half per cent annual amortization payment being required. The interest on these mortgage loans averages $4\frac{1}{2}$ per cent.

In addition, these banks loan money to communities on securities for the purpose of building public works, and make general loans secured by collateral or indorsements.

Private banks in Switzerland conduct the same kind of business as the canton banks, but their interest rates are higher.

RAIFFEISEN BANKS.

These associations are local and cooperative in character, and secure capital by deposit by their members, who are unlimitably liable for the obligations of the association. Loans are made both on personal indorsed notes or on mortgage, and the interest charged is $4\frac{1}{2}$ to $4\frac{3}{4}$ per cent.

DENMARK.

SMALL FARMERS' CREDIT.

The Government has appropriated some 4,000,000 crowns to be loaned to small farmers who wish to purchase land. The interest is 3 per cent, and money is loaned up to 90 per cent of the land value. The privilege of using this fund is limited to persons who have worked for other farmers for at least four years.

SMALL HOLDERS' CREDIT ASSOCIATIONS.

The only credit associations aided by the Government are two "small holders' credit associations" founded in 1880. These may make small loans only, up to 60 per cent of the value of farm land. The Government bears the expense of valuation and guarantees the quarterly payment of interest and amortization.

DANISH CREDIT SOCIETIES.

A number of societies have been formed which do not receive Government aid but which operate very much as do the *Landschaften* in Germany. These loans are made by the issue of notes or bonds to members, who in turn dispose of them on the exchange.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

CHARLES E. SMITH, PLAINTIFF,	}	No. 199.
v.		
KANSAS CITY TITLE & TRUST COMPANY,		
et al., defendants.		

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

In view of the order of the court remanding this case for reargument, the following supplemental brief is, by leave of the court, submitted on behalf of the United States.

THE FEDERAL FARM LOAN ACT—ITS PURPOSES AND PROVISIONS.

The broad intention of the Farm Loan Act is the betterment of the system of rural credits in the United States.

The remedial principles which underlie and are embodied in the Act are two:

First, that the permanent solution of the unfortunate existing unsatisfactory condition of rural credits

in the United States lies in cooperative action by the farmers who desire credit.

Second, that the Federal Government must, at least in the beginning, provide the leadership for and the machinery of that cooperative action.

The important provisions of the Act are:

A. That there shall be created at the seat of the Government a "Federal Farm Loan Bureau" which shall be a permanent branch of the Department of the Treasury. (Act, Sec. 3.) At the head of this bureau is the Federal Farm Loan Board, consisting of the Secretary of the Treasury and four members appointed by the President, with the advice and consent of the Senate. Under this Board there is to be a permanent expert staff, consisting of a Farm Loan Registrar for each of the twelve Farm loan districts of the country and a force of appraisers and examiners, and such attorneys, experts, assistants, and other employees as are necessary. (Act, Sec. 3.)

This permanent bureau is specifically charged with the duties (in addition to the supervision and control of cooperative banks and associations hereafter referred to) of giving general publicity as to the system of rural credits established, of "*instructing farmers how to organize and conduct Farm Loan associations,*" and "*to disseminate in its discretion information of the further instruction of farmers regarding the methods and principles of cooperative credit and reorganization.*" (Act, Sec. 3.)

The Act thus begins by the creation of a permanent government bureau which is directed to instruct the

farmers in cooperative rural credit and supervise and control the operations of farmers who form associations to borrow money. And this aspect is highly important—while the functions and form of the Farm Loan Bureau under the Act as respects farm credits are reminiscent of and complementary to the work of the Federal Reserve Board, the work of the Farm Loan Board in directing cooperation among its farmers is from the point of view of constitutional law also closely analogous to the functions of the Department of Agriculture in agricultural extension work in the State agricultural colleges and experiment stations. The Federal Farm Loan Bureau is an expert body created to explain cooperative rural credits to the farmers and to direct experiments of the farmers in the actual workings of cooperative rural credits. The Farm Loan Board have educational as well as executive duties.

B. The Act also provides definite machinery under which farmers may cooperate. Section 7 of the Act *et seq.* provides that ten or more farmers in any district who desire to borrow money on agricultural land may join together and form a National Farm Loan Association. Such National Farm Loan Associations are Federal corporations in which the farmers are stockholders. These corporations may borrow money to lend only to their respective stockholders under prescribed machinery and subject to the supervision of the Federal Farm Loan Bureau. Through the machinery thus established the farmer borrowers

join together and become responsible for each other's loans.

C. Section 4 of the Act directs the Farm Loan Board to create twelve districts in the United States and in each district to set up a Federal Land Bank. In the beginning each such bank is started by the Farm Loan Board. Each such Land Bank becomes a Federal corporation with the usual corporate powers of a rural credit bank. The stock of the Federal Land Banks is offered for public subscription to all citizens and states. So much of the stock as is not thus taken is to be subscribed by the United States. Certain of the directors are chosen by the Farm Loan Associations, the balance by the Farm Loan Board. The Federal Land Banks may under restrictions set out in the Act and under supervision of the Farm Loan Board enter upon the business of loaning money on rural credits and particularly it is intended to the Farm Loan Associations.

In effect then this portion of the Act prescribes for formation of cooperative lending associations under Federal direction to which the United States makes definite contributions of capital.

D. The Act (Sec. 16) also provides for formation of any number of Joint Stock Banks (also Federal corporations) which are in all essential respects of like powers and duties as the Federal Land Banks and under like supervision of the Farm Loan Board, but the United States shall not become a stockholder in the Joint Stock Banks.

In effect then the Joint Stock Banks are to be farm credit banks, by them is provided the machinery for loans to farmers, the Federal Government supervises them just like the Land Banks, but makes no contribution to their funds which they may use directly in loans to farmers. It is not perceived that there is any difference in function between the Federal Land Banks and the Joint Stock Banks—their financial operations are to be essentially the same.

E. By Sec. 6 of the Act both Federal Land Banks and Joint Stock Banks may be depositaries of public moneys and general government financial agents.

F. The Act also provides (Sec. 18 *et seq.*) that the Federal Land Banks and the Joint Stock Banks may issue and sell their Farm Loan Bonds to the public and to the Federal Reserve Banks (including all national banks) for investment. These Farm Loan Bonds must be in form specifically approved by the Farm Loan Board, and satisfactorily secured by first mortgages on farm lands. The Farm Loan Bonds issued by the Land Banks and the Joint Stock Banks are to be under substantially the same restrictions and to be in substantially the same form. They perform the same functions in both cases.

It is important to note with some care the precise form of the Farm Loan Bonds and the relation of the Farm Loan Bureau to them, because the United States assumes a great degree of responsibility for these Farm Loan Bonds. By Section 18 of the Act the Federal Land Bank or Joint Stock Bank must first make application to the Farm Loan Bureau for per-

mission to issue Farm Loan Bonds. The Farm Loan Board investigates and appraises the security offered (first mortgages on farm lands) and may permit or refuse permission for such issue. By Section 20 Farm Loan Bonds are physically engraved and prepared for issue at government expense by the Secretary of the Treasury in form approved by the Farm Loan Board, delivered by him to the Farm Loan Board, by the Board (in case it approve an issue) to the issuing Federal Land Bank or Joint Stock Bank. By Section 19 the Federal Land Bank or Joint Stock Bank assigns and transfers the mortgages (which are to be collateral for its Farm Loan Bonds) to an official of the Farm Loan Board who holds them as Trustee for the holders of the Farm Loan Bonds, certifies their correctness and legality—and assumes all the duties of a trustee of a corporate mortgage and very onerous additional duties. Such officer is, on direction of the Farm Loan Board, to call for further security to protect the Farm Loan Bonds and, in the case of the Federal Land Banks, there is added an official certificate as to legality of issue. Under section 22, if any of the collateral be paid off, the official of the Farm Loan Board may require such payments to be paid to him as trustee, and in case of default in these obligations, all Farm Loan Associations, Federal Land Banks and Joint Stock Banks are liquidated under the immediate direction of the Farm Loan Board.

The details of this machinery of operation are of the highest importance because they show that each of the Farm Loan Bonds has the responsibility of the United States behind it to the extent at least that the purchaser has the word of the United States (1) that the issue is wise; (2) that it has good security appraised by the United States, which the United States will look out for to see that it is kept good; (3) that the bond is in proper form and not an over-issue and that the legal technicalities have been complied with; and (4) that the United States will have complete charge of its collection. True, the United States is not technically in the position of maker or guarantor of payment of these bonds at their due date—but the United States certainly accepts complete moral and a limited financial responsibility for every Farm Loan Bond. They are not bonds of the United States, but they are obligations as to which the United States has voluntarily accepted duties which amount to seeing that the investor does not lose—and that is a financial responsibility, none the less so although the United States may not be suable for failure to live up to the obligation. This analysis will become important when we come to consider whether or not these Farm Loan Bonds are Federal instruments—because our opponents treat them as if they were like every other bond issued by a farmer to an investor or in a private transaction where the United States has no interest and no liability.

In effect these provisions provide a special machinery in which the Federal Government participates at every step, by which the cooperative loaning institutions (the Federal Land Banks and the Joint Stock Banks) may become able to obtain, from the investing public, moneys for use in their business of loaning money on farm security.

To sum up, the Act provides for—

(1) A new Government bureau who shall spread the doctrine of cooperative action as the solution of the rural credit problem.

(2) Machinery for cooperative and joint action by farmer borrowers—this (by the Farm Loan Associations) to be carried on by the farmers themselves under direction and supervision of the Farm Loan Bureau.

(3) Agencies (with and without direct financial support from the government) through which loans may be secured. These agencies (the Federal Land Banks and Joint Stock Banks) must also be carried on by the voluntary action of citizens under the direction and supervision of the Farm Loan Bureau.

(4) Machinery by which these two agencies may obtain moneys from the investing public. This machinery (the issue of Farm Loan Bonds) is under the immediate and complete direction and supervision of the Farm Loan Bureau, and for its operation the United States assumes moral and a limited financial responsibility to the investing public who buy the bonds.

In regard to taxation (concerning which this cause is largely concerned) the Act reads as follows:

EXEMPTION FROM TAXATION.

SEC. 26. That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock

land banks and national farm loan associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

As to this section it is to be noted that only one portion is under attack in this cause, i. e., that portion which purports to exempt from Federal and State taxes the particular Farm Loan Bonds issued under the Act which as we have pointed out have the moral and financial responsibility of the United States for their collection. Under the Act such bonds may be issued only by Federal Land Banks and Joint Stock Banks. The other questions of tax exemption arising under Section 26 can not affect the plaintiff in this cause—he is interested only to prevent his trust company from acquiring Farm Loan Bonds.

COOPERATION BY THE STATES IN THE FARM LOAN SYSTEM.

Although the Federal Farm Loan System has been only recently established, many States have made legislative provision for cooperation with its work.

Thus, many States have made the Farm Loan Bonds lawful investments for public and trust funds. The brief filed by the counsel for the Joint Stock Banks gives details of these statutes. They are important because they show that the States, so far as they have acted, have recognized the benefit of the system and are attempting to help it, and these statutes are also important in that they indicate that in certain States the point as to the validity of the exemption of the Farm Loan Bonds from State

taxes has already been settled against the plaintiff in this cause by an authority that he can not consistently question, i. e., the States themselves.

THE POINTS RAISED IN THE PRESENT CAUSE.

The appellant's contentions are two—first, that the organization of the corporate Federal Land Banks and Joint Stock Banks is unconstitutional; second, that the tax exemption of the Farm Loan Bonds is unconstitutional. Those are the only points made in the tribunal of the first instance or presented to this Court. In effect the plaintiff is objecting to illegal bonds issued by illegal organizations under an unconstitutional statute, and in order that he succeed on his own statement of the case he must show that the bonds are thus in effect not tax exempt and that the issuing banks are not valid organizations.

THERE CAN BE NO QUESTION OF THE POWER OF CONGRESS TO GRANT TO THE FARM LOAN BONDS EXEMPTION FROM FEDERAL TAXATION.

Leaving out of consideration for the moment any consideration of the validity of the exemption of the Farm Loan Bonds from State taxation, it is necessary to examine the question of Federal taxation. And at the outset it is important to note that the Farm Loan Bonds are now free of all Federal taxes. The only existing United States tax law under which it might be expected that they would be taxed is the Federal Income Tax Law and that statute (in its definition of gross income, Sec. 213, 4, b) expressly exempts them from taxation. So we start from the position

that under the now existing Federal tax laws Farm Loan Bonds are not taxable, and move to the question whether Congress has the power to promise to continue that exemption.¹

Congress has the undoubted power, subject only to the constitutional limitation as to uniformity, to declare the objects or subjects which it will tax. This power is plenary and practically not subject to judicial review. Thus, in *Flint v. Stone Tracy Company*, 220 U. S. 107, at page 169, the Court said:

The taxing power conferred by the Constitution knows no limit except that expressly stated in that instrument.

And it is to be remembered that in the *Stone Tracy* case this Court (p. 173) expressly upheld the constitutionality of the exemption of income of agricultural associations from the Income Tax Act.

Thus Congress clearly has the power to decide not to tax any Farm Loan Bond and it has done just that. And so likewise Congress has the undoubted power not only thus to classify the objects of taxation and leave some entirely free from tax for reasons which seem to it good, but it likewise has the right to lay down policies of tax exemptions, to grant tax exemptions permanently or for a limited period, and to promise tax exemptions. Thus Congress promised an exemption from State taxation on Indian lands for a period of years and

¹ Obviously the question of the validity of the promise is moot until Congress breaks the promise—a contingency which this Court may not willingly assume—and this Court need not consider the contingency at all.

that declaration was held effective by this Court in *U. S. v. Rickert*, 188 U. S. 432. Thus this Court early declared the power of the States to grant exemptions from taxation, and went further and held that contracts of exemption thus made by the States were protected by the Constitution of the United States and were not revocable. Such is the holding of *New Jersey v. Wilson*, 7 Cranch. 164, where Marshall, C. J., declared unconstitutional an act repealing an exemption from taxation attaching to certain New Jersey lands.

The power of Congress to choose the objects of its own taxation and to pledge the faith of the United States to the continuation of a policy of exemption and to make contracts of exemption is likewise undoubted—not the less so although it may not be protected by any constitutional prohibition against any subsequent Congressional action. The question of exemption of the Farm Loan Bonds from Federal taxation is a pure question of tax policy with which and with the practical wisdom of which the Courts have nothing to do—that point of the case is not open to controversy.

CONGRESS WAS EMPOWERED TO CREATE THE FEDERAL LAND BANKS AND JOINT STOCK BANKS AS FEDERAL CORPORATIONS AS NECESSARY INCIDENTS AND INSTRUMENTS OF THE FARM LOAN BUREAU WHICH IT WAS EMPOWERED TO CREATE.

These Federal Land Banks and Joint Stock Banks are the instruments by which the Farm Loan Bureau carries on its work of organizing and obtaining farm credits. They find constitutional sanction in the

power of Congress to establish the Farm Loan Bureau and give it "necessary and proper" instruments to do its work.

The Farm Loan Bureau is primarily a department composed of Federal officials. Their salaries and expenses are paid from the public moneys of the United States out of moneys specifically appropriated from time to time for that purpose. Public moneys are appropriated that the United States may subscribe to the capital of the Federal Land Banks, which in turn will use that money in their business. There can be no substantial doubt of the constitutional power of Congress to establish and make appropriations for this bureau of farm credits. If a general power in the United States to raise moneys and to expend them for any purpose that Congress deems public be not inherent in the fact of its sovereignty as a government, such power is clearly derivable from Article 1, Section 8, subdivision 1, of the Constitution, which authorizes Congress to—

lay and collect tax duties and imposts, to pay the debts and provide for the common defense and the general welfare of the United States.

Subject only to certain limitations as to uniformity and apportionment of taxes, and that it be the "general" welfare which is the object of the expenditures, that power is plenary and in no wise limited to those subjects which the United States (as opposed to the States) may or should regulate or control. (See *McCray v. U. S.*, 195 U. S., 27; *Veazie v. Fenno*,

8 Wall. 533, as to the use of the taxing power for the "general welfare.")

The point is of sufficient importance to justify elaboration. In the *McCray* case this Court upheld the plenary power of the United States to lay a tax which was in fact prohibitory on oleomargarine colored in a particular way—although the power to regulate the manufacture and sale of oleomargarine was a topic entirely within the reserved legislative power of the States. Just so the United States would have had the power (and for the same reasons) to appropriate Government moneys for and to have created an oleomargarine bureau which should educate and practically demonstrate the wise methods of manufacture of oleomargarine.

This power in the United States to expend its moneys for the general welfare—so often discussed by Monroe and Hamilton—has been upheld by this Court in justifying the use of the Federal power of eminent domain in projects of general interest—such as irrigation and roads. This Federal power is not a power which intrenches upon the reserved powers of the States over the subjects of legislation reserved to them by the Constitution, nor may the United States because of it legislate as to how farm loans shall be made in any State by the citizens of that State—that power is clearly reserved to the State. That is the point, and the whole point of *Kansas v. Colorado*, upon which our opponents so much rely. But the constitutional power to appropriate does

authorize the creation of a Government bureau which shall operate for the general interest of the farmers (or any other occupation) in the States, educating and instructing them and helping them to better their condition, and the power to appropriate does authorize, not only the hiring of officials, but the use and creation of any other agencies, corporate or personal, "necessary and proper" to that end.

Were there conceivable doubt upon that inference as an original question it must be regarded as settled by the long continued practice of the Congress and the Executive, which has now firmly embedded that principle in our governmental structure. The Department of Agriculture is created on that theory. The Department is defined in the Revised Statutes, Section 520, as follows:

There shall be at the seat of Government a Department of Agriculture, the general design and duties of which shall be to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word and to procure, propogate, and distribute among the people new and valuable seeds and plants.

There are the following Bureaus in the Department: Weather Bureau, Bureau of Animal Industry, Bureau of Plant Industry, Bureau of Chemistry, Bureau of Soils, Bureau of Entomology, Bureau of Biological Survey, Bureau of Crop Estimates, Office of Markets and Rural Organization, Office for the Enforcement of the Insecticide Act.

The following are among the duties prescribed by statute to be performed by the Department of Agriculture: Purchase and distribution of vegetable, field, and flower seeds; plants, shrubs, vines, bulbs, and cuttings shall be of the freshest and best obtainable varieties and adapted to general cultivation; preservation, distribution, introduction, and restoration of game birds and other wild birds.

More significant perhaps is the work of the Department of Agriculture in agricultural extension work in experiment stations and in the agricultural colleges, by direct teaching by department officials in the several states and by the furnishing of federal funds of large amount each year (directly appropriated out of public moneys) for the operation and endowment of agricultural colleges, in the states and in cooperation with the states. (See Compiled Statutes, 1916, Sec. 88776, *et seq.*)

Built upon the same theory the Office of Education is (Compiled Statutes, 1916, Sec. 765) organized to collect statistics and facts and

diffuse such information * * * as shall aid the people of the United States in the establishment and maintenance of efficient school systems, and otherwise promote the cause of education throughout the country.

The Bureau of Mines is established in the Department of the Interior likewise to collect information and disseminate it. Compiled Statutes 784. It charges fees for mineral tests made for individual citizens (Sec. 787) and has mining experiment

stations and safety stations in the several important mining regions (Sec. 787a).

The Department of Labor operates largely or almost wholly in the field where the states alone have the power to legislate as to labor. Thus by Section 964 of the Compiled Statutes there is established in that department "the Children's Bureau" to investigate all matters of child welfare "among all classes of our people."

The Public Health Service under Compiled Statutes Sec. 9128 is to study and investigate "the diseases of man—" and issue information for the use of the public.

It is needless further to multiply the instances that exemplify the constitutional power of Congress to create governmental agencies which operate in various fields of public interest, not by administering laws laid down by Congress for the conduct of the citizens of the States in those fields, but under and in accordance with the laws of the several States, for the public welfare, sometimes in cooperation with the States, oftener in matters of national import where the States can not efficiently act. Under that doctrine Congress had the power, if it saw fit to appropriate public moneys to loan to farmers, to create agencies and to furnish them moneys for that purpose, to make use of existing agencies formed pursuant to State laws (as the agricultural colleges of the States which receive Congressional appropriations), and we confidently argue, to create new corporate agencies of its own which should exemplify

and make possible the effective organization of cooperative rural credits which it is the duty of the Farm Loan Bureau to expound. The agricultural experiment stations and the experiment stations of the Bureau of Mines perform the same functions in their respective fields as the Joint Stock Banks and the Federal Land Banks in their field. And the question whether these instrumentalities shall be banks or corporations, or State or Federal corporations, are merely questions of the choice of means by which Congress furthers the national interest with national funds—the argument of our opponents is reminiscent of the scholastic doctrines which called forth *McCulloch v. Maryland*. If Congress deems wise it may create and use a corporate instrumentality to carry out its public purposes in the expenditure of its appropriated funds. The Joint Stock Banks, the Federal Land Banks, and the Farm Loan Associations are such instrumentalities.

The general purposes of the Farm Loan Act might have perhaps been carried out without the Federal incorporation of Federal Land Banks and Joint Stock Banks and Farm Loan Associations. Perhaps the organizers sent out by the Farm Loan Bureau, instead of creating corporations to do the banking business, might have formed partnerships or, more probably, corporations or banks under the laws of the several States, but because continued and complete control of these cooperative credit organizations, particularly in the beginning, was essential to their efficiency, it was better that these corporations

should be Federal. And in that such Federal corporate instruments were, and were decided by Congress to be, better and more efficient instruments, lies their constitutional justification. The fact that they are to operate in a State-controlled field, under State laws, and perhaps in place of State corporations which might otherwise exist, is of no importance, because the same thing is broadly true of every "general welfare" agent of the Federal Government, i. e., that he acts in a State-controlled field, under State laws, and if he were not there some other agent who would be a State agent might be doing the same or similar work.

Such is the first simple justification of the constitutionality of the creation of the Federal Land Banks and the Joint Stock Banks. In the argument up to this point we have assumed that the Federal Land Banks and the Joint Stock Banks and the Farm Loan Bureau work wholly in a State-controlled field. That is, of course, true of their function of helping individual farmers. But it is not true of all their activities. The Farm Loan System has substantial activities and duties in a field of activity entirely controlled by the Federal Government, where the Federal Government has the power and the duty to regulate the conduct of the citizens of the States, and in which the States have no rights. These also completely justify the creation of the Joint Stock Banks and the Federal Land Banks.

This field of activity, which under our constitutional system lies with the Federal Government, is the field of credit.

**THE CREATION OF THE FARM LOAN BANKS SYSTEM, THE
FEDERAL LAND AND THE JOINT STOCK BANKS IS A
CONSTITUTIONAL EXERCISE OF THE POWERS OF CON-
GRESS OVER THE CREDIT OF THE NATION.**

The Joint Stock Bank and the Federal Land Bank stand exactly upon the same constitutional basis as the National Banks whose credit activities they supplement; like the National Bank and its stock, they and their Farm Loan Bonds are "Federal instrumentalities" which Congress may create and protect from State taxation or interference. That the Congress which passed the Farm Loan Act so deemed them "Federal instrumentalities" is apparent from the use of that term in Section 26 of the Act (providing for tax exemption) and from their designation as "financial agents for the United States" (in the title of the Farm Loan Act), from the grant to them of limited banking powers (as to receipt of deposits, purchase of United States Bonds, Section 13 of the Act), by establishing deposit relations with the Reserve system (Sec. 13), by making Farm Loan Bonds eligible for purchase by members of the Federal Reserve System (Sec. 27), by making the banks of the Farm Loan System depositories of Government funds (Sec. 32). It is impossible to resist the conclusion that it was the purpose of the Farm Loan Act to create a system of farm loan banks which should supplement, be connected with, and be part of the national credit and banking system of the United States. And the same constitutional powers that justify the National Banking system justify the Farm Loan system. Nor may this

Court consider whether or not the link between the two systems is absolutely essential, or whether the other objects which Congress intended under the Farm Loan Act could have been obtained without this linking of the two systems—so long as Congress, acting within the realm of reason, joined those two systems it was acting within its constitutional power.

The financial system and the financial machinery of a country forms the basis of its general prosperity; the strength and flexibility of that financial system will directly affect the financial operation of the Government in its own fiscal affairs. There are two principal methods of doing business involved in the commercial system of every people. The first involves dealings upon a cash or currency basis, the second upon credit. It was apparent to the framers of the Constitution that currency must be uniform throughout the country in order to establish a sound basis for national trade and commerce, and thus in the Constitution Congress was given power "to coin money, regulate the value thereof and of foreign money, and fix the standard of weights and measures." That power, and the power to regulate trade and commerce between the States and with foreign countries, and the power to create fiscal agencies have been broadly construed by this Court to authorize Congress to provide a sound currency for the entire country and to secure the benefit of it to the people by appropriate legislation. It was on so broad a ground that *Veazie Bank v. Fenno*, 8 Wallace, 533 was decided. (The precise point was the constitu-

tionality of the prohibitive tax on notes issued by State banks.) The same general doctrine was the basis of the *Legal Tender Cases*, 12 Wall. 457. See opinion of Mr. Justice Bradley for the Court, pp. 555, 562-564. There he emphasizes the fact that the provision of a proper currency meant the necessity for providing of currency sound against threatened collapse of commercial credit. Thus, he says:

When the ordinary currency disappears, as it often does in time of war, when business begins to stagnate and general bankruptcy is imminent, then the Government must have power at the same time to renovate its own resources and to revive the drooping energies of the Nation by supplying it with a circulating medium. What that medium shall be, what its character and qualities, will depend upon the greatness of the exigency and the degree of promptitude which it demands. These are legislative questions. The heart of the Nation must not be crushed out. The people must be aided to pay their debts and meet their obligations. The debtor interest of the country represents its bone and sinew, and must be encouraged to pursue its avocations. If relief were not afforded universal bankruptcy would ensue, and industry would be stopped, and government would be paralyzed in the paralysis of the people. * * *

That opinion has been construed and rightly construed as expounding the power of Congress generally to regulate the machinery of commercial credit as well as currency for the Nation. It is on that

theory that the system of National Banks was built. The National Banks like Federal Land Banks and Joint Stock Banks have functions as financial agents and government depositaries but their chief function and the one for which they are constructed is to furnish the machinery for and facilitate commercial credit on a national scale. They are subject only to federal jurisdiction and are essentially national institutions. Thus in *Talbot v. Silver Bow County*, 139 U. S. 438, this Court said (p. 442):

The national banking system was national in its design, coextensive in its operation with the territorial limits of the United States and intended to be the banking system for the whole country, Territories as well as States. * * * These various provisions, scattered through the entire body of the statute respecting national banks, emphasize that which the character of the system implies—an intent to create a national banking system coextensive with the territorial limits of the United States, and with uniform operation within those limits, to establish everywhere throughout the United States banks with the security which a national examination gives, and furnish a currency of uniform value, the same in Arizona as in New York, in Territory as in State.

It has only been, however, with the creation of the Federal Reserve System that it has been generally understood how broad in extent is the national power over currency. After long experience under the relatively inefficient system previously existing, with

a currency based upon the issue of Government bonds and a credit system built upon disconnected and uncooperating banks, the Federal Reserve System was created. By the Reserve System, the basis of the national currency was changed from the inelastic basis (the national bonds) to the elastic basis of the commercial credit of the country and the unrelated Government agents (the National Banks) were brought together into one cooperative system through the Federal Reserve Banks. Thus the constitutional power to regulate the monetary currency has been interpreted and rightly interpreted to give to Congress power to create Federal instruments which are in fact the machines through which credit and the currency are obtained by the Nation as a whole.

In fact the Government of the United States has found that in order to create a sound monetary basis it was necessary to build a complete national system of credit machinery. That system of credit machinery was the Federal Reserve System. The Federal Reserve System admittedly failed as a complete system for credit machinery for the whole country because of its inability largely to absorb or to care for the question of agricultural credit. Under the Reserve Act the Reserve Banks were strictly limited in their credit allowances to agriculture, and it is to fill that lack that the Federal Land Banks and the Joint Stock Banks were created to establish the national basis for agricultural credit. Thus, the machinery of national credit is a Federally controlled

field which, under its constitutional power over the money of the country, Congress has the complete right to regulate—simply because the money of the country and the credit of the country are, always and particularly in this modern day, parts of one and the same field. To deny to Congress the right to add to its credit regulation by creating the Farm Loan System (to supplement the Federal Reserve System) would be to deny to a substantial element of the borrowers of the country the benefits that come from national regulation of currency and credit. The Farm Loan System is firmly and necessarily a part of the monetary system of the country and thus the action in creating the Federal Land Banks and Joint Stock Banks was justified since they were the Federal agents in a Federally controlled field of legislation.

THE EXEMPTION OF THE FARM LOAN BONDS FROM STATE TAXATION IS WITHIN THE POWER OF CONGRESS.

Having shown the constitutionality of the creation of the Federal Land Banks and the Joint Stock Banks as Government agents, and having shown that their exemption and the exemptions of the Farm Loan Bonds from Federal taxation is clearly constitutional, we may proceed to the last question of the case—the validity of the exemption of the Farm Loan Bonds from State taxation.

There have been a number of adjudicated cases in this Court which make definite the taxing powers of the States over the property and agencies of the United States and *vice versa*. Beginning with the

announcement of *McCulloch v. Maryland*, a rule of administration has grown up, and is now firmly established, that the properties, agencies, instrumentalities, and obligations of the State and Federal Governments are respectively exempt from each other's taxation, and the application of the rule does not rest upon the fact that in any particular instance great or little harm would be caused by the exercise of the tax authority. The rule which takes its origin in the structure of the dual sovereignty under which we live is an absolute rule defining the scope of the taxing authority in either State or Nation.

Thus in *Pollock v. Farmers Loan and Trust Co.*, 157 U. S., 429 (the Income Tax Case), at page 583, this Court, considering the constitutionality of the income tax on municipal obligations held by the Farmers' Loan and Trust Company, again affirmed that income derived from such municipal obligations must be free of Federal tax. The Court said, page 584:

As the States can not tax the powers, the operations, or the properties of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either these instruments or property of a State.

Thus, the bonds and other obligations of the United States or of the States or municipalities have been held to be completely tax exempt, and thus also, property owned by the United States or the States has been repeatedly held mutually tax exempt.

In *Van Brocklin v. State of Tennessee*, 117 U. S. 151, lands in Tennessee which had been purchased by the United States for tax were held to be not liable to State tax while owned by the United States. In that case Judge Gray, giving the opinion of the Court (p. 155), said:

The States have no power by taxation or otherwise to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general Government.

And again (p. 158):

The United States do not and can not hold property, as a monarch may, for private or personal purposes.

This Court has held in *South Carolina v. United States*, that the property of the State of South Carolina used by the State in its liquor monopoly operation was held by it in its private, not its governmental capacity, and therefore was not exempt from Federal taxation. This opinion called for the most vigorous dissent. But the limitation of the doctrine is not here important because this Court has clearly (in the *Van Brocklin* case cited *supra*, 117 U. S. at p. 158) held

the United States do not and can not hold property as a monarch may, for private and personal purposes.

Questions of greater difficulties have arisen where the tax has been on an agency or instrumentality

of the Government. Thus in *Collector v. Day*, 11 Wall. 113, at an early date this Court declared that it was not competent for Congress to impose a tax on the salary of a judicial officer of a State, and from the very first it has been repeatedly held that a tax on a banking agency of the United States may not be levied by a State without the consent of the United States. The citation of several cases will illustrate the limitations on the taxation of agencies and instrumentalities.

In *Ambrosini v. United States*, 187 U. S. 1, one Ambrosini was indicted in a Federal District Court, found guilty, and fined for executing a bond to the State of Illinois without affixing the United States revenue stamp to the bond. The bond was given to the State of Illinois pursuant to an act for the licensing of liquor dealers which required the giving of the bond as the prerequisite of obtaining a liquor license. The Court construed the Illinois statute as a regulation of the liquor traffic and clearly within the police powers of the State, saying (p. 7):

The granting of the license was the exercise of a strictly governmental function, and the giving of the bond was part of the same transaction. To tax the license would be to impair the efficiency of State and municipal action on the subject and assume the power to suppress such action. And considering license and bond together, taxation of the bond involves the same consequences. In themselves the bonds were not mere incidents of the regulation of the traffic, but essentially

safeguards against its evils and governmental instrumentalities of State and of city, as authorized by the State, to insure the public welfare in the conduct of the business, although the business itself was not governmental. They were not mere individual undertakings to secure a personal privilege as suggested by the Court below, but means for the preservation of peace, the health, and the safety of the community in compelling strict observance of the law and remedying injurious results.

The general principle is that as the means and instrumentalities employed by the general Government to carry into operation the powers granted to it are exempt from taxation by the State, so are those of the States exempt from taxation by the general Government. It rests on the law of self-preservation, for any Government whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government exists only at the mercy of the latter. *Nelson, J., Collector v. Day*, 11 Wall. 113.

This Court has declined to hold that the profits which an independent contractor makes out of doing business with the United States are exempt from State taxation.

Fidelity and Deposit Co. v. Pennsylvania,
240 U. S. 349.

Baltimore Shipbuilding & Dry Dock Co. v. Baltimore, 195 U. S. 375 (*semble*).

In the *Fidelity and Deposit* case the contractor served the United States only by furnishing surety bonds, and in the second case the only interest which the United States had in the property taxed was a possible reversionary right in the land in question.

But where the independent agent takes over and assumes a duty which lies upon the United States this Court has squarely held that no tax may be laid by a State upon the business of that independent agent by which it was, under contract with the United States, carrying out the obligation of the United States.

Choctaw & Gulf Railroad v. Harrison, 235 U. S. 292, is a case where the appellant sought to enjoin a tax collection claimed by Oklahoma based upon gross sales of coal dug from mines belonging to the Choctaw and Chickasaw Indians which the appellant leased and operated. It appeared that by an Act of Congress known as the Curtis Act, title to the coal lands was common property of the members of the Indian tribes, that the revenues from them should be used for the education of their children and that the mines should be operated under the protection of the Secretary of the Interior and coal royalties on leases paid to the United States. In harmony with those provisions the railroad leased the mines. The Court said, page 298:

From the foregoing, it seems manifest that the agreement with the Indians imposes upon the United States a definite duty in regard to opening and operating the coal mines upon

their lands and appellant is the instrumentality through which this obligation is being carried into effect. Such an agency can not be subjected to an occupation or privilege tax by a State. * * * It is unnecessary to consider the power of the State of Oklahoma to treat coals dug from mines operated by the appellant as other personalty and to subject them to uniform ad valorem tax, for it seems to us clear that the act of 1908 provided for no such imposition. * * * In effect the Oklahoma tax act prescribes an occupation tax. In accepting as true the allegations of appellant's bill, we think it can not be lawfully subjected thereto.

Practically the same question arose in a later case on similar facts where the tax was not upon gross sales but directly upon a lease from the Federal Government to the mine operator. In *Indian Oil Company v. Oklahoma*, 240 U. S. 522, the State of Oklahoma has levied a tax upon a lease of oil lands made by the Osage Indians under Federal authorization. This court then held:

that the lessee is a Federal instrumentality and the State therefore could not tax its interest in the leases directly or indirectly through a tax on the capital stock.

The case goes on the authority of *Choctaw, etc., v. Harrison*, *supra*.

In *United States v. Rickert*, 188 U. S. 432, a somewhat similar question involving the Indian rights came before this Court. There was under consideration an act of Congress of 1887 under which the

United States allotted certain lands to the Indian allottees who should occupy them and at the end of twenty-five years receive completed patents for them, the title to be held in trust for the allottees by the United States during that period. The act provided, among other things, that neither the lands allotted or the permanent improvements thereon or the personal property intended for use on the lands obtained from the United States and used by the Indians during the period of trust, were subject to State or local taxation. In this case the United States under the direction of the Attorney General successfully maintained a suit to enjoin the collection of such taxes by the County of Roberts in South Dakota against the Indian beneficiaries of the act. The tax exemption was held good, this Court saying clearly that while these lands were "held by the United States in execution of its plans relating to the Indians" there was no power in South Dakota to tax the lands "until at least the fee was conveyed to the Indians." This Court said, page 437:

To tax these lands is to tax an instrumentality employed by the United States for the benefit and control of this dependent race, of which this Court has said that "from their very weakness and helplessness so largely due to the course of dealing with the Federal Government with them and the treaties in which it has been promised there arises the duties of protection, and with it the power." * * *. So that if they may be taxed then the obligations which the Government has assumed in reference to these Indians may be entirely

defeated; for by the act of 1887 the Government has agreed at a named time to convey the land to the allottee in fee, discharged of the trust "and free of all charge or encumbrance whatsoever." To say that these lands may be assessed and taxed by the County of Roberts under the authority of the State is to say that they may be sold for taxes and thus become so burdened that the United States could not discharge its obligations to the Indians without itself paying the taxes imposed from year to year and thereby keeping the lands free from encumbrance.

Citing the *Van Brocklin* case, *supra*, and *McCulloch v. Maryland*.

And the court also reached the conclusion that the permanent improvements and personal property used by the Indians were on the same footing as the land as to the tax exemption.

This *Rickert* case bears many aspects of similarity to the present case. Just as in the *Rickert* case, the Government, in pursuance of its plans for the Indians assumed an obligation that the Indians should finally get their land free of encumbrance, so in the case of the Farm Loan Bonds the United States, acting in the general interest, undertakes the obligation toward the investing public that the investor shall have a sound bond and collect it. In each case the tax exemption created by express words of the congressional statute was intended to prevent the States from taxing Federal instrumentalities which were to carry out the obligation which the United States assumes, and in each case, once it be granted

that the United States has power to undertake the obligation, the constitutional right to protect the obligation by the declaration of exemption from State taxation must follow. The only constitutional question which can arise in this Court is whether the method of protection of the obligation assumed by the United States (by tax exemption) is a method which Congress may, within the realm of reason, deem a proper method of protection—and on that point the *Rickert* case is a persuasive authority, since in the *Rickert* case this Court upheld the action of Congress in protecting another similar instrumentality by the same method.

Applying these doctrines to the present case, it is clear when we consider the Farm Loan System as a whole, of which the Farm Loan Bonds are an essential part, that that system is a federal agency acting in the national interest, and that every part of that agency, unless otherwise permitted by Congress, must be free of State tax. The Farm Loan Bureau is primarily composed of officers of the United States, they and their activities and the instruments with which they work, including the Land Banks, the Farm Associations, and the Farm Loan Bonds, are tax-free agents of the United States used by it not only for the purposes of the Farm Loan Bureau, but in the case of the Federal Land Banks and Joint Stock Banks as general banking agents of the United States, and as part of its national credit system.

And it is also clear, when we examine the Farm Loan Bond microscopically in the performance of its particular function in the system, that it is an

instrumentality of government of the United States just as in the *Ambrosini* case the bond which the liquor dealer had to give before he could get his Illinois license to sell liquor was part of the machinery of government. The bond in each case may be the bond which represents the ultimate obligation of a private individual out of a transaction in which he is engaged wholly for his own profit; but nevertheless it is in each case the instrumentality in a governmental function.

In answering this branch of the case the appellant has looked upon the Farm Loan Bonds as if they were purely private bonds given by the farmer to the investor. It is of course quite true that by the giving of the Farm Loan Bond the Joint Stock Bank will presumably profit and the ultimate holder will presumably profit. And so the appellant would make it seem a purely private business, but the interest of the United States in those instrumentalities (which are essential machinery in the Farm Loan System) is not in the least private, but purely governmental. Nor is it the less governmental (as the appellant erroneously argues) because the activity of the United States in this field of Farm Loan credits is not primarily a legislative activity in a field where the United States has the duty or power of regulation, but is a governmental activity by the United States in a field where the United States has not regulative power and the States have regulative power. Or, to put it in other terms, the fact that the activity of the United States is in a State-controlled field where its Federal function is primarily in educating and

persuading the citizens to undertake an object for their general welfare, does not show that it is a private activity of the United States. The United States' activity in organizing the cooperative effort of the farmers and in guiding and protecting that cooperative action is in no sense private, but wholly governmental. The fact that the Constitution does not place a duty on Congress thus to act, does not make its action private. The United States can not have a private activity (just as in the *Van Brocklin* case it can not have property in its private capacity); its work is governmental and its agency is governmental in every field in which it may engage—quite as much so when the Federal agents are working for the general welfare as where the Federal agents are carrying out the laws of the United States in a field such as interstate commerce, where the United States has the duty of legislation.

And in another—and very important—aspect it would seem that the Farm Loan Bonds are clearly an instrumentality of government which apart from any declaration in the Act would be exempt from state taxation. In the case of the coal land of the Choctaw Indians above referred to this Court decided that the business of the coal operator was exempt from state taxation because that coal operator was carrying out the obligation of the United States to the Indian—an obligation which was simply the general one of the United States toward its ward which had crystallized in a contract with the tribe. Just so in this case, by the Farm Loan Bond the Federal Land Bank or the Joint Stock Bank carries

out the obligation which the United States has assumed supervision of and responsibility for—i. e., that the bond should be validly issued, that the security should be good and kept good, and that the bond should ultimately be paid. The performance by the Federal Land Bank or the Joint Stock Bank of its obligations under the Farm Loan Bonds which it issues are the way and the only way in which the United States may see performed the obligations which it has voluntarily assumed to the investing public on account of those bonds. True the United States has not signed its name on the Farm Loan Bonds; true it has not promised that they shall be paid on a day certain; but just as in the *Choctaw* case it has assumed an obligation and it is using an instrumentality to carry it out, that instrumentality is no more and no less private than in the *Choctaw* case. The Company that leased the *Choctaw* lands to dig coal from them was a private trading company making money from its coal operation, just as and no more than a stockholder of the Joint Stock Bank may make money from the operation of that bank. The obligation of the United States in the *Choctaw* case, just as in the case of the Farm Loan Bond, was voluntarily assumed by the United States, and both were in the governmental field.

So that thus, whether we consider the Farm Loan Bond as part of the Farm Loan System and the national credit system and see it thus a Federal agency, or whether we consider it as part of an investment of Federal funds in the activity of Federal Government in a system in the general welfare, or

whether we examine it microscopically and find it an instrument for carrying out Federal obligations to see the Farm Loan Bond kept good and paid—in every aspect the Farm Loan Bonds appear as Federal instrumentalities and their tax exempt feature following without regard to the particular language of the Farm Loan Act granting that exemption.

But the Act itself furnishes a further reason for the exemption. By that Act (Section 26) Congress has declared Joint Stock Banks, Federal Land Banks and Farm Loan Bonds Federal instrumentalities. By that Act and that Section 26 it has specifically declared its judgment that the exemption is necessary, and in all the adjudicated cases without exception the Courts have followed and this Court has followed, the announcement of the legislative branch as to the need of exemption and has given great weight in particular to the Congressional statements of intention. And so long as the Congressional declaration that its instrumentality needs exemption be not absurd or unreasonable this Court will not consider whether the Congressional judgment is wise or unwise; but simply whether it is in the realm of reason. And certainly when we realize that Congress might, under clear constitutional authority, have used the funds of the United States directly in making advances of funds to the farmers and might have issued, not the Farm Loan Bonds, but its own specific obligations payable on a day certain to raise the necessary moneys to make these loans, and that its own obligations would have been

clearly exempt from State taxation, it seems absurd to say that the accomplishment of that result by the Federal Government by the bond of Farm Credit Banks created by the Federal Government, secured by the Government's own moral and, to a limited degree, financial responsibility may not carry a like exemption. The choice of means of raising the money lay in Congress and in view of the patent necessity not only that the Farm Loan Bonds should bear a low rate of interest, but that they should be popularized—that the system as a whole should work—there can be little question of the wisdom of the course which Congress adopted. And the argument of the appellant that these Farm Loan Bonds are private bonds or that the function of the Government toward them is in some way a private and not a governmental function is entirely in error.

CONCLUSION.

It is respectfully submitted that the Federal Land Banks and the Joint Stock Land Banks were validly created by the Farm Loan Act and that the exemption of the Farm Loan Bonds from taxation provided in the act is valid and that the act is in all respects constitutional.

October, 1920.

WILLIAM L. FRIERSON,
Solicitor General.

W. G. McADOO,
Special assistant to the Attorney General.

J. P. COTTON,
Attorney.

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JAMES D. MAHER

CLERK

Farm Loan Act Case

Supreme Court of the United States

October Term, 1919

No. ~~588~~ 199

CHARLES E. SMITH,

Appellant,

versus

KANSAS CITY TITLE AND TRUST COMPANY,

et al.,

Appellees.

Appeal from the District Court of the United States,
for the Western Division of the Western District
of Missouri.

MOTION TO ADVANCE.

CHARLES E. HUGHES,

*Counsel for Federal Land Bank of
Wichita, Kansas, Appellee.*

WILLIAM G. McADOO,

GEORGE W. WICKERSHAM,

*Counsel for First Joint Stock Land
Bank of Chicago, Illinois, Appellee.*

IN THE
Supreme Court of the United States
October Term, 1919

CHARLES E. SMITH,	}	<i>Appellant,</i>
<i>against</i>		
KANSAS CITY TITLE AND TRUST COM-		
PANY, etc.,			Appellees.

*Appeal from the District Court of the United States,
for the Western Division of the Western District
of Missouri.*

MOTION TO ADVANCE.

The respondents, the Federal Land Bank, of Wichita, Kansas, and the First Joint Stock Land Bank of Chicago, Illinois, move that this case be advanced for hearing at an early date, for the following reasons, to wit:

1. An appeal was docketed in this Court in November, 1919, and on motion, was advanced for hearing on January 5th, 1920, and was argued and submitted a day or two thereafter. Within a few days past, the Court has restored the case to the docket, and ordered a re-argument.

2. The sole question involved is the constitutionality of the Federal Farm Loan Act of July 17, 1916 (39 Stats., 360), as amended January 18th, 1918.

3. Bonds have been issued and are outstanding under the provisions of the Act, and the question of their validity is at issue.

4. The case is of great public interest to the Federal Farm Loan Board, to the Treasury Department of the United States, which holds a large amount of the bonds issued by the Federal Land Banks, to the many Federal Land Banks and Joint Stock Land Banks, and to investors and borrowers of the country, and an early hearing of the re-argument is very desirable.

CHARLES E. HUGHES,

*Counsel for Federal Land Bank, of
Wichita, Kansas.*

W. G. McADOO,

GEORGE W. WICKERSHAM,

*Counsel for First Joint Stock Land
Bank of Chicago, Illinois.*

We concur in the above.

WM. MARSHALL BULLITT,

FRANK HAGERMAN,

Counsel for Appellant.

W. G. McADOO,

*Special Assistant to the Attorney General, for
the United States, as amicus curiae.*

JUSTIN D. BOWERSOCK,

Counsel for Kansas City Title & Trust Company.



SUPREME COURT OF THE UNITED STATES.

No. 199.—OCTOBER TERM, 1920.

Charles E. Smith, Appellant,	}	Appeal from the District Court of the United States for the Western District of Missouri.
<i>vs.</i>		
Kansas City Title & Trust Com- pany et al., Appellees.		

[February 28, 1921.]

Mr. Justice DAY delivered the opinion of the Court.

A bill was filed in the United States District Court for the Western Division of the Western District of Missouri by a shareholder in the Kansas City Title & Trust Company to enjoin the Company, its officers, agents and employees from investing the funds of the Company in farm loan bonds issued by Federal Land Banks or Joint Stock Land Banks under authority of the Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, as amended January 18, 1918, 40 Stat. 431.

The relief was sought on the ground that these Acts were beyond the constitutional power of Congress. The bill avers that the Board of Directors of the Company are about to invest its funds in the bonds to the amount of \$10,000 in each of the classes described, and will do so unless enjoined by the court in this action. The bill avers the formation of twelve Federal Land Banks, and twenty-one Joint Stock Land Banks under the provisions of the Act.

As to the Federal Land Banks, it is averred that each of them has loaned upon farm lands large amounts secured by mortgage, and after depositing the same with the Farm Loan Registrar, has executed and issued collateral trust obligations called Farm Loan Bonds, secured by the depositing of an equivalent amount of farm mortgages and notes; and that each of said Federal Land Banks has sold, and is continuing to offer for sale, large amounts of said farm loan bonds. The bill also avers that various persons in different parts of the United States have organized twenty-one

Joint Stock Land Banks, the capital stock of which is subscribed for and owned by private persons; that the Joint Stock Land Banks have deposited notes and mortgages with the Farm Loan Registrar, and issued an equivalent amount of collateral trust obligations called Farm Loan Bonds, which have been sold and will be continued to be offered for sale to investors in large amounts in the markets of the country. A statement is given of the amount of deposits by the Secretary of the Treasury with the Federal Land Banks, for which the banks have issued their certificates of indebtedness bearing interest at 2% per annum. It is averred that on September 30, 1919, Federal Land Banks owned United States bonds of the par value of \$4,230,805; and the Joint Stock Land Banks owned like bonds of the par value of \$3,287,503 on August 31, 1919; that pursuant to the provisions of the Act the Secretary of the Treasury has invested \$8,892,130 of the public funds in the capital stock of the Federal Land Banks, and that on July 1, 1919, the Secretary of the Treasury on behalf of the United States held \$8,265,809 of the capital stock of the Federal Land Banks; that pursuant to the provisions of Section 32 of the Act, as amended, the Secretary of the Treasury has purchased farm loan bonds issued by the Federal Land Banks of the par value of \$149,775,000; that up to September 30, 1919, bonds have been issued under the Act by the Federal Land Banks to the amount of \$285,600,000, of which about \$135,000,000 are held in the Treasury of the United States, purchased under the authority of the amendment of January 19, 1918; that up to September 30, 1919, twenty-seven Joint Stock Land Banks have been incorporated under the Act, having an aggregate capital of \$8,000,000, all of which has been subscribed and \$7,450,000 paid in; that bonds have been issued by Joint Stock Land Banks to the amount of \$41,000,000, which are now in the hands of the public; that the Secretary of the Treasury up to the time of the filing of the bill has not designated any of the Federal Land Banks nor the Joint Stock Land Banks as depositaries of public money, nor except as stated later in the bill, has he employed them or any of them as financial agents of the Government, nor have they or any of them performed any duties as depositaries of public money, nor have they or any of them accepted any deposits or engaged in any banking business. The bill avers that during the summer of

1918 the Federal Land Banks at Wichita, St. Paul and Spokane were designated as financial agents of the Government for making seed grain loans to farmers in drought-stricken sections, the President having at the request of the Secretary of Agriculture set aside \$5,000,000 for that purpose out of the \$100,000,000 war funds. The three banks mentioned made upwards of 15,000 loans of that character, aggregating a sum upwards of \$4,500,000, and are now engaged in collecting these loans, all of which are secured by crop liens; that these banks act in that capacity without compensation, receiving only the actual expenses incurred.

Section 27 of the Act provides that farm loan bonds issued under the provisions of the Act by Federal Land Banks or Joint Stock Land Banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits. The bill avers that the defendant Trust Company is authorized to buy, invest in and sell Government, State and municipal and other bonds, but it cannot buy, invest in or sell any such bonds, papers, stocks or securities which are not authorized to be issued by a valid law or which are not investment securities, but that nevertheless it is about to invest in farm loan bonds; that the Trust Company has been induced to direct its officers to make the investment by reason of its reliance upon the provisions of the Farm Loan Acts, especially sections 21, 26 and 27, by which the Farm Loan Bonds are declared to be instrumentalities of the Government of the United States, and as such with the income derived therefrom, are declared to be exempt from Federal, State, Municipal and local taxation, and are further declared to be lawful investments for all fiduciary and trust funds. The bill further avers that the Acts by which it is attempted to authorize the bonds are wholly illegal, void and unconstitutional and of no effect because unauthorized by the Constitution of the United States.

The bill prays that the Acts of Congress authorizing the creation of the banks, especially sections 26 and 27 thereof, shall be adjudged and decreed to be unconstitutional, void and of no effect, and that the issuance of the farm loan bonds, and the taxation exemption feature thereof, shall be adjudged and decreed to be invalid.

The First Joint Stock Land Bank of Chicago and the Federal Land Bank of Wichita, Kansas, were allowed to intervene and

became parties defendant to the suit. The Kansas City Title & Trust Company filed a motion to dismiss in the nature of a general demurrer, and upon hearing the District Court entered a decree dismissing the bill, from this decree appeal was taken to this court.

No objection is made to the Federal jurisdiction, either original or appellate, by the parties to this suit, but that question will be first examined. The Company is authorized to invest its funds in legal securities only. The attack upon the proposed investment in the bonds described is because of the alleged unconstitutionality of the Acts of Congress undertaking to organize the banks and authorize the issue of the bonds. No other reason is set forth in the bill as a ground of objection to the proposed investment by the Board of Directors acting in the Company's behalf. As diversity of citizenship is lacking, the jurisdiction of the District Court depends upon whether the cause of action set forth arises under the Constitution or laws of the United States. Judicial Code, Sec. 24.

The general rule is that where it appears from the bill or statement of the plaintiff that the right to relief depends upon the construction or application of the Constitution or laws of the United States, and that such Federal claim is not merely colorable, and rests upon a reasonable foundation, the District Court has jurisdiction under this provision.

At an early date, considering the grant of constitutional power to confer jurisdiction upon the Federal Courts, Chief Justice Marshall said:

"a case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends upon the construction of either," *Cohens v. Virginia*, 6 Wheat. 264, 379; and again, when "the right or title set up by the party may be defeated by one construction of the Constitution or law of the United States, and sustained by the opposite construction." *Osborn v. Bank of the United States*, 9 Wheat. 738, 822. These definitions were quoted and approved in *Patton v. Brady*, 184 U. S. 608, 611, citing *Gold Washing Co. v. Keyes*, 96 U. S. 199, 201; *Tennessee v. Davis*, 100 U. S. 257; *White v. Greenhow*, 114 U. S. 307; *Railroad Company v. Mississippi*, 102 U. S. 135, 139.

This characterization of a suit arising under the Constitution or laws of the United States has been followed in many decisions of this and other Federal courts. See *Macon Grocery Company v. Atlantic Coast Line*, 215 U. S. 501, 506, 507; *Shulthis v. McDougal*, 225 U. S. 569, § 3. The principle was applied in *Brushaber v. Union Pacific Co.*, 240 U. S. 1, in which a shareholder filed a bill to enjoin the defendant corporation from complying with the income tax provisions of the Tariff Act of October 3, 1913. In that case while there was diversity of citizenship, a direct appeal to this court was sustained because of the constitutional questions raised in the bill, which had been dismissed by the court below. The repugnancy of the statute to the Constitution of the United States, as well as grounds of equitable jurisdiction, were set forth in the bill, and the right to come here on direct appeal was sustained because of the averments based upon constitutional objections to the Act. Reference was made to *Pollock v. Farmers' Loan & Trust Company*, 157 U. S. 429, where a similar shareholder's right to sue was maintained, and a direct appeal to this court from a decree of the Circuit Court was held to be authorized.

In the *Brushaber* case the Chief Justice, speaking for the Court said:

"The right to prevent the corporation from returning and paying the tax was based upon many averments as to the repugnancy of the statute to the Constitution of the United States, of the peculiar relation of the corporation to the stockholders and their particular interests resulting from many of the administrative provisions of the assailed act, of the confusion, wrong and multiplicity of suits and the absence of all means of redress which would result if the corporation paid the tax and complied with the act in other respects without protest, as it was alleged it was its intention to do. To put out of the way a question of jurisdiction, we at once say that in view of these averments and the ruling in *Pollock v. Farmers' Loan & Trust Company*, 157 U. S. 429, sustaining the right of a stockholder to sue to restrain a corporation under proper averments from voluntarily paying a tax charged to be unconstitutional on the ground that to permit such a suit did not violate the prohibitions of Section 3224, Rev. Stat., against enjoining the enforcement of taxes, we are of opinion that the contention here made that there was no jurisdiction of the cause since to entertain it would violate the provisions of the Revised Statutes referred to is without merit. . . .

"Aside from averments as to citizenship and residence, recitals as to the provisions of the statute and statements as to the business of the corporation contained in the first ten paragraphs of the bill advanced to sustain jurisdiction, the bill alleged twenty-one constitutional objections specified in that number of paragraphs or subdivisions. As all the grounds assert a violation of the Constitution, it follows that in a wide sense they all charge a repugnancy of the statute to the Sixteenth Amendment under the more immediate sanction of which the statute was adopted."

The jurisdiction of this court is to be determined upon the principles laid down in the cases referred to. In the instant case the averments of the bill show that the directors were proceeding to make the investments in view of the Act authorizing the bonds about to be purchased, maintaining that the Act authorizing them was constitutional and the bonds valid and desirable investments. The objecting shareholder avers in the bill that the securities were issued under an unconstitutional law, and hence of no validity. It is, therefore, apparent that the controversy concerns the constitutional validity of an Act of Congress which is directly drawn in question. The decision depends upon the determination of this issue.

The general allegations as to the interest of the shareholder, and his right to have an injunction to prevent the purchase of the alleged unconstitutional securities by misapplication of the funds of the corporation, gives jurisdiction under the principles settled in *Pollock v. Trust Company*, and *Brushaber v. Union Pacific Company, supra*. We are, therefore, of the opinion that the District Court had jurisdiction under the averments of the bill, and that a direct appeal to this court upon constitutional grounds is authorized.

We come to examine the questions presented by the attack upon the constitutionality of the legislation in question. The Federal Farm Loan Act is too lengthy to set out in full. It is entitled: "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositaries and financial agents for the United States, and for other purposes."

The administration of the act is placed under the direction and control of a Federal Farm Loan Bureau established at the seat of

Government in the Treasury Department, under the general supervision of the Federal Loan Board consisting of the Secretary of the Treasury and four members appointed by the President, by and with the advice and consent of the Senate. The United States is divided into twelve districts for the purpose of establishing Federal Land Banks. Each of the banks must have a subscribed capital of not less than \$750,000, divided into shares of \$5.00 each, which may be subscribed for by any individual, firm or corporation, or by the government of any State, or of the United States. No dividends shall be paid on the stock owned by the United States, but all other stock shall share in dividend distributions without preference. The Federal Farm Loan Board is to designate five directors who shall temporarily manage the affairs of each Federal Land Bank, and who shall prepare an organization certificate which, when approved by the Federal Farm Loan Board and filed with the Farm Loan Commissioner, shall operate to create the bank a body corporate. The Federal Farm Loan Board is required to open books of subscription for the capital stock of each Federal Land Bank, and if within thirty days thereafter any part of the minimum capitalization of \$750,000 of any such bank shall remain unsubscribed, it is made the duty of the Secretary of the Treasury to subscribe the balance on behalf of the United States.

The Amendment of January 18, 1918, authorizes the Secretary of the Treasury to purchase bonds issued by Federal Land Banks, and provides that the temporary organization of any such bank shall be continued so long as any farm loan bonds shall be held by the Treasury, and until the subscription to stock in such bank by National Farm Loan Associations shall equal the amount of the stock held by the United States Government. When these conditions are complied with a permanent organization is to take over the management of the bank consisting of a Board of Directors composed of nine members, three of whom shall be known as district directors and shall be appointed by the Farm Loan Board, who shall represent the public interest, six of whom to be known as local directors, shall be chosen by, and be representative of national farm loan associations.

Federal Land Banks are empowered to invest their funds in the purchase of qualified first mortgages on farm lands situated within the Federal Land Bank District within which they are organized

or acting. Loans on farm mortgages are to be made to co-operative borrowers through the organization of corporations known as National Farm Loan Associations, by persons desiring to borrow money on farm mortgage security under the terms of the Act. Ten or more natural persons who are the owners of or are about to become the owners of farm land qualified as security for mortgage loans, and who desire to borrow money on farm mortgage security, may unite to form a National Farm Loan Association. The manner of forming these associations, and the qualifications for membership, are set out in the Act.

A loan desired by each such person must be for not more than \$10,000 nor less than \$100, and the aggregate of the desired loans not less than \$20,000. The application for loan must be accompanied by subscriptions to stock of a Federal Land Bank equal to 5% of the aggregate sum desired on the mortgage loan. Provision is made for appraisal of the land, and report to the Federal Farm Loan Board. No persons but borrowers on farm loan mortgages shall be members or shareholders of National Farm Loan Associations.

Shareholders in Farm Loan Associations are made individually responsible for the debts of the Association to the extent of the amount of the stock owned by them respectively, in addition to the amount paid in and represented by their shares.

When any National Farm Loan Association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank in its district, it must subscribe to the capital stock of the Federal Land Bank to an amount of 5% of such loan, which capital stock shall be held by the Federal Land Bank as collateral security for the payment of the loan, the Association shall be paid any dividends accruing and payable on the capital stock while it is outstanding. Such stock may, in the discretion of the directors and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and shall be so retired upon the full payment of the mortgage loan. In such event, the National Farm Loan Association must pay off at par and retire the corresponding shares of its stock which were issued when the Land Bank stock so retired was issued; but it is further provided that the capital stock of the Land Bank shall not be reduced to less than 5% of the principal of the outstanding farm loan bonds issued by it.

The shares in National Farm Loan Associations shall be of the par value of \$5.00 each.

At least 25% of that part of the capital of any Federal Land Bank for which stock is outstanding in the name of National Farm Loan Associations must be held in quick assets. Not less than 5% of such capital must be invested in United States Government Bonds.

The loans which Federal Land Banks may make upon first mortgages on farm lands are provided for in Section 12 of the Act. By Section 13 these banks are empowered, subject to the provisions of the Act, to issue and sell farm loan bonds of the kind described in the Act, and to invest funds in their possession in qualified first mortgages on farm lands, to receive and to deposit in trust with the Farm Loan Registrar, to be held by him as collateral security for farm loan bonds, first mortgages upon farm lands, and, with the approval of the Farm Loan Board, to issue and to sell their bonds secured by the deposit of first mortgages on qualified farm lands as collateral, in conformity with the provisions of Section 18 of the Act. By the Amendment of January 18, 1918, the Secretary of the Treasury was empowered during the years 1918 and 1919, to purchase farm loan bonds issued by Federal Land Banks to an amount not exceeding \$100,000,000 each year, and any Federal Land Bank was authorized at any time to repurchase at par and accrued interest, for the purpose of redemption or resale, any of the bonds so purchased from it and held in the United States Treasury.

It is also provided that the bonds of any Federal Land Bank so purchased and held in the Treasury one year after the termination of the pending war shall, upon thirty days' notice from the Secretary of the Treasury, be redeemed and repurchased by such bank at par and accrued interest. By Section 15 it is provided that whenever, after the Act shall have been in effect for one year, it shall appear to the Federal Farm Loan Board that national farm loan associations have not been formed and are not likely to be formed, in any locality, because of peculiar local conditions, the Board may in its discretion authorize Federal Land Banks to make loans on farm lands through agents approved by the Board, on the terms and conditions and subject to the restrictions prescribed in that section.

The Act also authorizes the incorporation of Joint Stock Land Banks, with capital provided by private subscription. They are organized by not less than ten natural persons, and are subject to the requirements of the provisions of Section 4 of the Act so far as applicable. The board of directors shall consist of not less than five members. Each shareholder shall have the same voting privileges as the holders of shares in National Banking Associations, and shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares. The Joint Stock Land Bank is authorized to do business when capital stock to the amount of \$250,000 has been subscribed, and one-half paid in cash, the balance remaining subject to call by the Board of Directors, the charter to be issued by the Federal Farm Loan Board. No bonds shall be issued until the capital stock is entirely paid up. Except as otherwise provided, Joint Stock Land Banks shall have the powers of and be subject to all the restrictions and conditions imposed on Federal Land Banks by the Act, so far as such conditions or restrictions are applicable.

Federal Land Banks may issue Farm Loan Bonds up to twenty times their capital and surplus. Joint Stock Land Banks are limited to the issue of Farm Loan Bonds not in excess of fifteen times the amount of their capital and surplus. Joint Stock Land Banks can only loan on first mortgages upon land in the State where located, or in a State contiguous thereto. No loan on mortgage may be made by any bank at a rate exceeding 6% per annum exclusive of amortization payments. Joint Stock Land Banks shall in no case charge a rate of interest on farm loans which shall exceed by more than 1% the rate established by the last series of Farm Loan Bonds issued by them, which rate shall not exceed 5% per annum.

Provisions for the issue of farm loan bonds secured by first mortgages on farm lands or United States bonds, as collateral, which must be deposited with the Federal Farm Loan Registrar, are made for Federal Land Banks and Joint Stock Land Banks, in each case the issue is made subject to the approval of the Federal Farm Loan Board. The farm loan mortgages, or United States bonds, which constitute the collateral security for the bonds, must be deposited with the Farm Loan

Registrar.

Section 26 of the Act provides as follows:

"That every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks or to joint stock land banks and farm loan bonds issued under the provisions of this Act shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the bank is located, but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

"Nothing herein shall be construed to exempt the real property of federal and joint stock land banks and national farm loan associations from either State, county or municipal taxes to the same extent according to its value as other real property is taxed."

Since the decision of the great cases of *McCulloch v. Maryland*, 4 Wheaton 316, and *Osborn v. Bank*, 9 Wheaton 738, it is no longer an open question that Congress may establish banks for national purposes, only a small part of the capital of which is held by the Government, and a majority of the ownership in which is represented by shares of capital stock privately owned and held; the principal business of such banks being private banking conducted with the usual methods of such business. While the express power to create a bank or incorporate one is not found in the Constitution, the court speaking by Chief Justice Marshall, in *McCulloch v. Maryland*, found authority so to do in the broad general powers conferred by the Constitution upon the Congress to levy and collect taxes, to borrow money, to regulate commerce, to pay the public debts, to declare and conduct war, to raise and support armies, and to provide and maintain a navy, etc. Congress it was held had authority to use such means as were deemed appropriate to exercise the great powers of the Government by virtue of Article I, Section 8, Clause 18 of the Constitution granting to Congress the right to

make all laws necessary and proper to make the grant effectual. In *First National Bank v. Union Trust Company*, 244 U. S. 416, 419, the Chief Justice, speaking for the court, after reviewing *McCullough v. Maryland* and *Osborn v. Bank*, and considering the power given to Congress to pass laws to make the specific powers granted effectual said:

"In terms it was pointed out that this broad authority was not stereotyped as of any particular time but endured, thus furnishing a perpetual and living sanction to the legislative authority within the limits of a just discretion enabling it to take into consideration the changing wants and demands of society and to adopt provisions appropriate to meet every situation which it was deemed required to be provided for."

That the formation of the bank was required in the judgment of the Congress for the fiscal operations of the Government, was a principal consideration upon which Chief Justice Marshall rested the authority to create the bank; and for that purpose being an appropriate measure in the judgment of the Congress, it was held not to be within the authority of the court to question the conclusion reached by the legislative branch of the Government.

Upon the authority of *McCullough v. Maryland* and *Osborn v. Bank* the national banking system was established, and upon them this court has rested the constitutionality of the legislation establishing such banks. *Farmers & Mechanics National Bank v. Deering*, 91 U. S. 29, 33, 34.

Congress has seen fit in Section 6 of the Act to make both classes of banks, when designated for that purpose by the Secretary of the Treasury, depositaries of public money, except receipts from customs, under regulations to be prescribed by the Secretary of the Treasury, and has authorized their employment as financial agents of the Government, and the banks are required to perform such reasonable duties, as depositaries of public moneys and financial agents as may be required of them. The Secretary of the Treasury shall require of the Federal Land Banks and the Joint Stock Land Banks, thus designated, satisfactory security, by the deposit of United States bonds or otherwise, for the safe-keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as the financial agents of the Government.

Section 6 also provides that no Government funds deposited under the provisions of the section shall be invested in mortgage loans or farm loan bonds.

It is said that the power to designate these banks as such depositories has not been exercised by the Government, and that the Federal Land Banks have acted as Federal agents only in the case of loans of money for seed purposes made in the summer of 1918, to which we have already referred. But the existence of the power under the Constitution is not determined by the extent of the exercise of the authority conferred under it. Congress declared it necessary to create these fiscal agencies, and to make them authorized depositories of public money. Its power to do so is no longer open to question.

But, it is urged, the attempt to create these Federal agencies, and to make these banks fiscal agents and public depositories of the Government, is but a pretext. But nothing is better settled by the decisions of this court than that when Congress acts within the limits of its constitutional authority, it is not the province of the judicial branch of the Government to question its motives. *Veazie Bank v. Fenno*, 8 Wall. 533, 541; *McCray v. United States*, 195 U. S. 27; *Flint v. Stone-Tracy Co.*, 220 U. S. 107, 147, 153, 156 and cases cited.

That Congress has seen fit to make of these banks fiscal agencies and depositories of public moneys, and also to grant to them banking powers of a limited character, in nowise detracts from the authority of Congress to use them for the governmental purposes named, if it sees fit to do so. A bank may be organized with or without the authority to issue currency. It may be authorized to receive deposits in only a limited way. Speaking generally, a bank is a moneyed institution to facilitate the borrowing, lending and caring for money. But whether technically banks, or not, these organizations may serve the governmental purposes declared by Congress in their creation. Furthermore, these institutions are organized to serve as a market for United States Bonds. Not less than 5% of the capital of the Federal Land Banks, for which stock is outstanding ~~in~~ Farm Loan Associations, is required to be invested ~~in~~ United States Bonds. Both kinds of banks are empowered to buy and sell United States Bonds.

In *First National Bank v. Trust Company*, 244 U. S. *supra*, this court sustained the power of Congress to enable a national bank

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to transact business, which, by itself considered, might be beyond the power of Congress to authorize. In that case it was held to be within the authority of Congress to permit national banks to exercise, by permission of the Federal Reserve Board, when not in contravention of local law, the office of trustee, executor, administrator or registrar of stocks or bonds.

We, therefore, conclude that the creation of these banks, and the grant of authority to them to act for the Government as depositaries of public moneys and purchasers of Government bonds, brings them within the creative power of Congress although they may be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest. This does not destroy the validity of these enactments any more than the general banking powers destroyed the authority of Congress to create the United States bank, or the authority given to national banks to carry on additional activities, destroyed the authority of Congress to create those institutions.

In the brief filed upon reargument counsel for the appellant seem to admit the power of Congress to appropriate money for the direct purposes named and in that brief they say: "Tax exemption is the real issue sought to be settled here." Deciding, as we do, that these institutions have been created by Congress within the exercise of its legitimate authority, we think the power to make the securities here involved tax exempt necessarily follows. This principle was settled in *McCulloch v. Maryland*, and *Osborn v. Bank, supra*.

That the Federal Government can, if it sees fit to do so, exempt such securities from taxation, seems obvious upon the clearest principles. But, it is said to be an invasion of state authority to extend the tax exemption so as to restrain the power of the state. Of a similar contention made in *McCulloch v. Maryland*, Chief Justice Marshall uttered his often quoted statement: "That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied." 4 Wheaton 431.

The same principle has been recognized in the *National Bank Cases* declaring the power of the States to tax the property and

franchises of national banks only to the extent authorized by the laws of Congress. *Owensboro Nat. Bank v. Owensboro*, 173 U. S. 664, involved the validity of a franchise tax in Kentucky on national banks. In that case this court declared (pp. 668, 669) that the States were wholly without power to levy any tax directly or indirectly upon national banks, their property, assets or franchises, except so far as the permissive legislation of Congress allowed such taxation; and the court declared that the right granted to tax the real estate of such banks, and the shares in the names of the shareholders, constituted the extent of the permission given by Congress, and any tax beyond these was declared to be void.

In *Farmers' Bank v. Minnesota*, 232 U. S. 516, this court held that a State may not tax bonds issued by the municipality of a territory; that to tax such bonds as property in the hands of the holder is, in the last analysis, an imposition upon the right of a municipality to issue them.

The exercise of such taxing power by the States might be so used as to hamper and destroy the exercise of authority conferred by Congress, and this justifies the exemption. If the States can tax these bonds they may destroy the means provided for obtaining the necessary funds for the future operation of the banks. With the wisdom and policy of this legislation we have nothing to do. Ours is only the function of ascertaining whether Congress in the creation of the banks, and in exempting these securities from taxation, Federal and State, has acted within the limits of its constitutional authority. For the reasons stated, we think the contention of the Government, and of the appellees, that these banks are constitutionally organized and the securities here involved legally exempted from taxation, must be sustained.

It follows that the decree of the District Court is

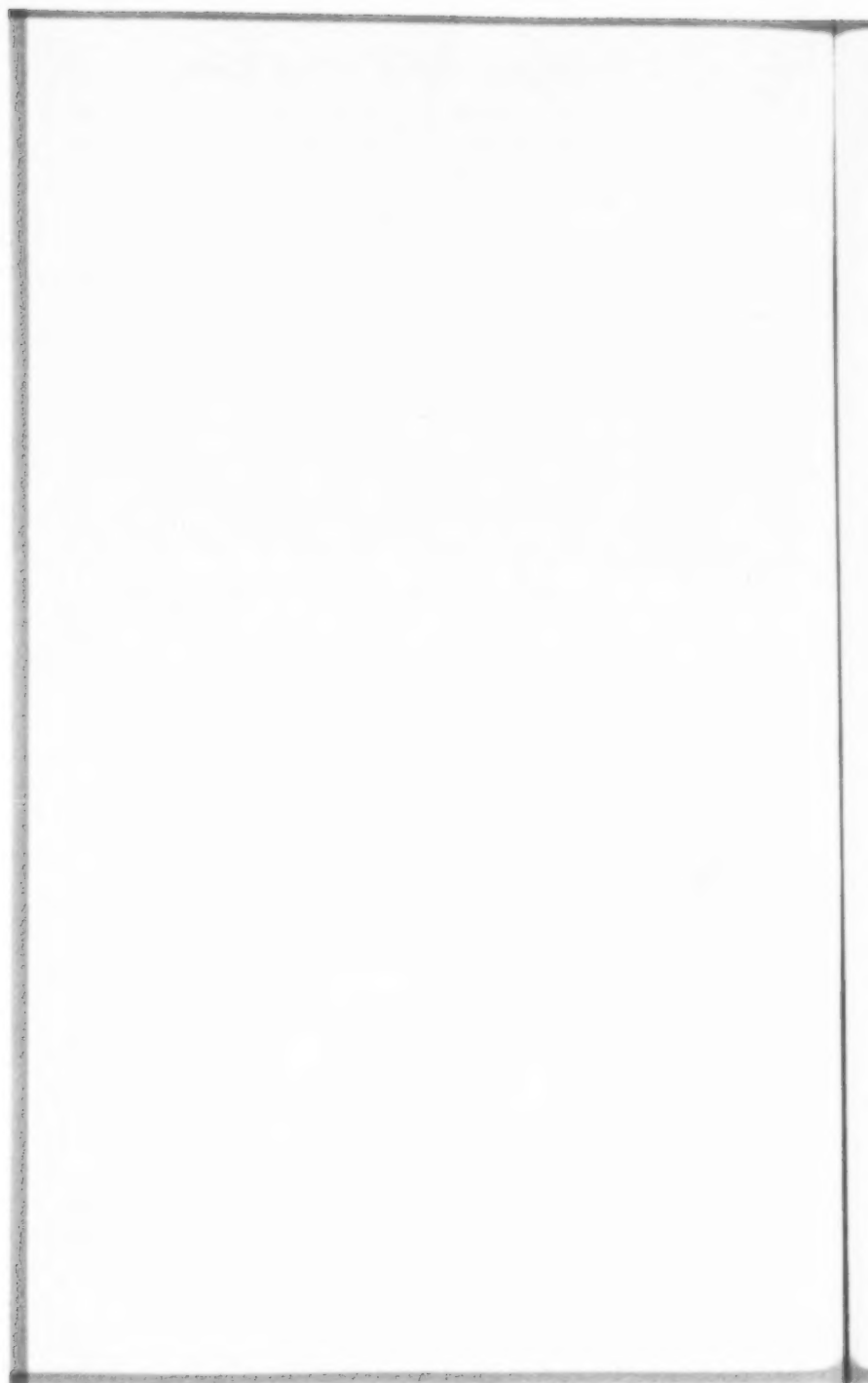
Affirmed.

Mr. Justice BRANDEIS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk Supreme Court, U. S.



SUPREME COURT OF THE UNITED STATES.

No. 199.—OCTOBER TERM, 1920.

Charles E. Smith, Appellant,	} Appeal from the District Court of the United States for the Western District of Missouri.
<i>vs.</i>	
Kansas City Title & Trust Com- pany et al.	

[February 28, 1921.]

Mr. Justice HOLMES, dissenting.

No doubt it is desirable that the question raised in this case should be set at rest, but that can be done by the Courts of the United States only within the limits of the jurisdiction conferred upon them by the Constitution and the laws of the United States. As this suit was brought by a citizen of Missouri against a Missouri corporation the single ground upon which the jurisdiction of the District Court can be maintained is that the suit "arises under the Constitution or laws of the United States" within the meaning of § 24 of the Judicial Code. I am of opinion that this case does not arise in that way and therefore that the bill should have been dismissed.

It is evident that the cause of action arises not under any law of the United States but wholly under Missouri law. The defendant is a Missouri corporation and the right claimed is that of a stockholder to prevent the directors from doing an act, that is, making an investment, alleged to be contrary to their duty. But the scope of their duty depends upon the charter of their corporation and other laws of Missouri. If those laws had authorized the investment in terms the plaintiff would have had no case, and this seems to me to make manifest what I am unable to deem even debatable, that, as I have said, the cause of action arises wholly under Missouri law. If the Missouri law authorizes or forbids the investment according to the determination of this Court upon a

point under the Constitution or Acts of Congress, still that point is material only because the Missouri law saw fit to make it so. The whole foundation of the duty is Missouri law, which at its sole will incorporated the other law as it might incorporate a document. The other law or document depends for its relevance and effect not on its own force but upon the law that took it up, so I repeat once more the cause of action arises wholly from the law of the State.

But it seems to me that a suit cannot be said to arise under any other law than that which creates the cause of action. It may be enough that the law relied upon creates a part of the cause of action although not the whole, as held in *Osborn v. The Bank of the United States*, 9 Wheat. 738, 819-823, which perhaps is all that is meant by the less guarded expressions in *Cohen v. Virginia*, 6 Wheat. 264, 379. I am content to assume this to be so, although the *Osborn* case has been criticized and regretted. But the law must create at least a part of the cause of action by its own force, for it is the suit, not a question in the suit, that must arise under the law of the United States. The mere adoption by a State law of a United States law as a criterion or test, when the law of the United States has no force *proprio vigore*, does not cause a case under the State law to be also a case under the law of the United States, and so it has been decided by this Court again and again. *Miller v. Swann*, 150 U. S. 132, 136, 137; *Louisville & Nashville R. R. Co. v. Western Union Telegraph Co.*, 237 U. S. 300, 303. See also *Shoshone Mining Co. v. Rutter*, 177 U. S. 505, 508, 509.

I find nothing contrary to my views in *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 10. It seems to me plain that the objection that I am considering was not before the mind of the Court or the subject of any of its observations, if open. I am confirmed in my view of that case by the fact that in the next volume of reports is a decision, reached not without discussion and with but a single dissent, that 'a suit arises under the law that creates the cause of action.' That was the *ratio decidendi* of *American Mills Co. v. Layne & Bowler Co.*, 241 U. S. 257, 260. I know of no decisions to the contrary and see no reason for overruling it now.

Mr. Justice McREYNOLDS concurs in this dissent. In view of our opinion that this Court has no jurisdiction we express no judgment on the merits.

